

Inspector General

United States
Department of Defense



American Recovery and Reinvestment -
Implementation of the Advanced Metering
Infrastructure Requirements for Planning, Contractor's
Performance, and Reporting Was Ineffective

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Acronyms and Abbreviations

AMI	Advanced Metering Infrastructure
CARs	Contract Action Reports
CATEX	Categorical Exclusion
CY	Calendar Year
CDRL	Contract Data Requirements List
DFARS	Defense Federal Acquisition Regulations Supplement
EPACT	Energy Policy Act
ESC	Engineering Service Center
FAR	Federal Acquisition Regulation
FEAD	Facilities Engineering Acquisition Division
FPDS	Federal Procurement Data System
FTE	Full-Time Equivalent
NAVFAC	Naval Facilities Engineering Command
NEPA	National Environmental Policy Act
NFAS	Naval Facilities Acquisition Supplement
OMB	Office of Management and Budget
OPNAVINST	Naval Operations Instruction
QA	Quality Assurance
SCAN	Specialty Center Acquisition NAVFAC
SW	Southwest



INSPECTOR GENERAL
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ALEXANDRIA, VIRGINIA 22350-1500

September 10, 2012

MEMORANDUM FOR NAVAL INSPECTOR GENERAL

SUBJECT: American Recovery and Reinvestment Act—Implementation of the
Advanced Metering Infrastructure Requirements for Planning, Contractor's
Performance, and Reporting Was Ineffective
(Report No. DODIG-2012-127)

We are providing this report for review and comment. Naval Facilities Engineering Command Southwest officials did not have effective controls over the planning, contractor's performance, and reporting of the Advanced Metering Infrastructure project, valued at \$24.8 million. As a result, Navy lacks reasonable assurance that \$24.8 million of Recovery Act funds were appropriately justified and the installation of the meters was properly planned. We considered management comments on a draft of this report when preparing the final report.

DoD Directive 7650.3 requires that recommendations be resolved promptly. As a result of management comments, we redirected draft Recommendation A and B.4 to the Commander, Naval Facilities Engineering Command, and request comments on the final report. Also, as a result of the management comments, draft Recommendation B.4 has been renumbered as Recommendation B.1 and draft Recommendations B.1, B.2, and B.3 have been renumbered to B.2.a, B.2.b, and B.2.c, respectively. The comments from the Commander, Naval Facilities Engineering Command on Recommendations C.1, C.2, C.3, C.4, and C.5 were responsive, and no further comments are required. However, we request that the Commanding Officer, Naval Facilities Engineering Command (NAVFAC) Southwest, provide additional comments on Recommendations B.2.a, B.2.b, and B.2.c. Therefore, we request all comments in response to the final report by October 10, 2012.

If possible, send a portable document format (.pdf) file containing your comments to audros@dodig.mil. Comments provided to the final report must be marked and portion-marked, as appropriate, in accordance with DoD Manual 5200.01. Copies of the comments must contain the actual signature of the authorizing official for your organization. We are unable to accept the /Signed/ symbol in place of the actual signature. If you arrange to send classified comments electronically, you must send them over the SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-8866 (DSN 664-8866).

Alice F. Carey
Assistant Inspector General
Readiness, Operations, and Support



Results in Brief: American Recovery and Reinvestment Act—Implementation of the Advanced Metering Infrastructure Requirements for Planning, Contractor's Performance, and Reporting Was Ineffective

What We Did

Our objective was to determine whether DoD ensured the appropriate use of Recovery Act Funds by conducting adequate planning (planning was incorporated into this objective), contractor's performance, and reporting the Advanced Metering Infrastructure (AMI) project, valued at \$24.8 million. The AMI is a system that records customers' energy consumption, collects and retrieves metering data (electric, gas, water, and steam), and transports the data back to a centralized data repository.

What We Found

NAVFAC SW officials did not have effective controls in place to ensure adequate planning, contractor's performance, and accurate reporting of the project. This occurred because NAVFAC SW officials expedited the planning process to secure Recovery Act funds and Engineering Service Center officials were unclear about their roles and responsibilities for meeting the requirements of Public Law 109-58, "Energy Policy Act of 2005," (EPACT 2005), August 8, 2005. As a result, the Navy lacks reasonable assurance that \$24.8 million of Recovery Act funds were appropriately justified and the installation of the meters was properly planned.

NAVFAC SW officials also did not properly oversee the installation of the advanced meters. For example, NAVFAC SW officials did not develop quality assurance plans for the surveillance of the AMI project because they were waiting for the contractor's final design packages. As a result, there was no reasonable assurance that the meters installed for the AMI project will conform to the contract's requirements.

In addition, NAVFAC SW officials did not ensure the contractor completed the nine task orders for the AMI project within agreed upon milestones because they did not have an effective project manager to oversee the contractor's performance. As a result, seven of the nine task orders are at risk of missing the AMI timeline mandated in the EPACT 2005. Further, Specialty Center Acquisition NAVFAC did not insert FAR

clause 52.211-12, Liquidated Damages," in eight of the nine task orders. The contracting officer made a decision that the clause should not be included in the task orders. As a result, the absence of the liquidated damages clause is a factor that may have contributed to the delays in the AMI project.

Lastly, NAVFAC SW officials did not adequately review data the contractor submitted to www.FederalReporting.gov, the central Government-wide data collection system for Recovery Act projects.

What We Recommend

We recommend the Commanding Officer, Naval Facilities Engineering Command:

- issue guidance clearly defining the roles and responsibilities to comply with the requirements of EPACT 2005;
- appoint a project and design manager to oversee the design and installation of advanced meters; and
- review the performance of the officials responsible for not including the liquidated damages clause.

Management Comments and Our Response

Management comments were responsive for 5 of 10 recommendations. As a result of management comments, we redirected Recommendations A and B.4 to the Commander, NAVFAC, and request additional comments. Draft Recommendation B.4 has been renumbered as Recommendation B.1 and Recommendations B.1, B.2, and B.3 have been renumbered to B.2.a, B.2.b, and B.2.c. We request that the Commanding Officer, NAVFAC SW, provide additional comments to Recommendations B.2.a, B.2.b, and B.2.c. We request all comments to the final report by October 10, 2012. Please see the recommendations table on the back of this page.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Commander, Naval Facilities Engineering Command	A and B.1	
Commanding Officer, Naval Facilities Engineering Command Southwest	B.2.a, B.2.b, and B.2.c	C.1, C.2, C.3, C.4, and C.5

**Please provide comments by
October 10, 2012.**

Table of Contents

Introduction	1
Objective	1
Recovery Act Background	1
Advanced Metering Requirements	2
Naval Facilities Engineering Command Southwest Initiated the Advanced Metering Infrastructure Project	2
Naval Facilities Engineering Command Needs Better Controls for Managing the Advanced Metering Infrastructure Project	3
 Finding A. Advanced Metering Infrastructure Project Was Not Properly Planned	 5
Improvements Needed for Planning Requirements	5
Planning Process Was Expedited	7
Naval Facilities Engineering Command Generally Complied With Energy Policy Act of 2005 Requirements	7
Naval Facilities Engineering Command Unclear on Roles and Responsibilities Under the Energy Policy Act of 2005	8
Conclusion	8
Management Comments on the Finding and Our Response	8
Recommendations, Management Comments, and Our Response	11
 Finding B. Oversight of the Contractor’s Performance Was Not Adequate	 13
Oversight of Metering Infrastructure Needs Improvement	13
Quality Assurance Plans Not Prepared	14
Design Packages Were Unavailable for Preparing Quality Assurance Plans	15
Monitoring of Project Milestones Was Ineffective	15
Oversight Over Managing Milestones Was Ineffective	18
Advanced Metering Infrastructure Base Contract Made Liquidated Damages Clause Optional	19
Liquidated Damages Language Not in Task Orders	19
Conclusion	20
Recommendations, Management Comments, and Our Response	20
 Finding C. Quality Reviews of Reported Data Were Not Adequate	 26
Recovery Act Reporting Requirements	26
Reviews of the Contractor’s Reports Need Improvement	26
Data Quality Reviews Did Not Identify Reporting Errors	28
Reasonableness of Reported Jobs Was Not Validated	29
Procedures for Verifying Jobs Reported Were Ineffective	30
Recovery Act Contract Actions Not Reported in Federal Procurement Data System	30

Table of Contents (cont.)

Naval Facilities Engineering Command Southwest Unaware Contract	
Actions Not Listed in Federal Procurement Data System	31
Conclusion	32
Recommendations, Management Comments, and Our Response	32

Appendices

A. Scope and Methodology	35
Use of Computer-Processed Data	35
Use of Technical Assistance	36
Prior Coverage	36
B. Recovery Act Criteria and Guidance	37
C. Advanced Metering Infrastructure Organizational Structure	39
D. Recovery Act Reporting	40

Management Comments

Department of the Navy	42
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Introduction

Objective

Our objective was to determine whether DoD and its Components are implementing Public Law 111-5, “The American Recovery and Reinvestment Act of 2009,” (Recovery Act), February 17, 2009. Specifically, we evaluated the effectiveness of Government controls over the contractor’s performance and reporting on selected projects, including contracts awarded to qualified small businesses. We expanded the scope of this audit to include planning for the Advanced Metering Infrastructure (AMI) project. The AMI contractor was not a qualified small business; therefore, the small business evaluation was not included in our scope of work. See Appendix A for a discussion of our scope and methodology as well as the prior coverage.

Recovery Act Background

The President signed the Recovery Act into law on February 17, 2009.

The purposes of this Act include the following:

- (1) To preserve and create jobs and promote economic recovery.
- (2) To assist those most impacted by the recession.
- (3) To provide investments needed to increase economic efficiency by spurring technological advances in science and health.
- (4) To invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits.
- (5) To stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases.

The heads of Federal departments and agencies shall manage and expend the funds made available in this Act so as to achieve the purposes specified ... including commencing expenditures and activities as quickly as possible consistent with prudent management.

Office of Management and Budget, Federal Acquisition Regulation, and DoD Recovery Act Guidance

Criteria for planning and implementing the Recovery Act changed from 2009 through 2011 as the Office of Management and Budget (OMB) issued 11 memoranda and 1 bulletin to address the implementation of the Recovery Act. The Federal Acquisition Regulation (FAR), DoD, and its Components issued additional implementing guidance. See Appendix B for a list of Federal Government-level Recovery Act criteria and guidance. OMB, FAR, and DoD guidance related to contractor reporting is also discussed in Finding B.

DoD Recovery Act Program Plans

DoD received approximately \$7.2 billion¹ in Recovery Act funds for projects supporting the Recovery Act's purpose. In March 2009, DoD released expenditure plans for the Recovery Act, listing DoD projects that received Recovery Act funds. The Department of the Navy received approximately \$1.2 billion in Recovery Act funds for Operations and Maintenance; Military Construction; and Research, Development, Test and Evaluation. Table 1 shows funding allocated for each appropriation.

**Table 1. Department of the Navy
Program-Specific Recovery Act Appropriations**

Appropriation	Amount (in millions)
Operations and Maintenance	\$815.9
Military Construction	280.0
Research, Development, Test and Evaluation	75.0
Total	\$1,170.9

Of the \$1.2 billion, the Department of the Navy allocated approximately \$24.8 million (Operations and Maintenance) for the installation of advanced meters throughout Naval Facilities Engineering Command (NAVFAC) Southwest (SW), California.

Advanced Metering Requirements

Public Law 109-58, "Energy Policy Act of 2005" (EPACT 2005), August 8, 2005, section 103, requires all Federal buildings to be metered by October 1, 2012, for the purposes of efficient use of energy and reduction in the cost of electricity used. EPACT 2005 also states, "each Agency shall use, to the maximum extent practical, advanced meters or advanced metering devices that provide data at least daily and that measure at least hourly consumption of electricity in the Federal buildings of the agency." Additionally, Executive Order 13423, "Strengthening Federal Environmental, Energy, and Transportation Management," March 29, 2007, section VI, part A, states, "to the maximum extent practical, agencies should install metering devices that measure consumption of potable water, electricity, and thermal energy in Federal buildings and other facilities and grounds." Unlike the EPACT 2005, which only requires replacing electrical meters, the Executive Order requires replacing all electrical, gas, water, and steam meters.

NAVFAC SW Initiated the AMI Project

In an effort to comply with the EPACT 2005, NAVFAC Engineering Service Center (ESC) and NAVFAC SW officials initiated an AMI pilot project on September 26, 2008, at Naval Base Ventura County in Port Hueneme, California. The

¹DoD originally received \$7.42 billion; however, Public Law 111-226, Title III, "Rescissions," August 10, 2010, rescinded \$260.5 million on August 10, 2010. The \$7.2 billion does not include \$4.6 billion for the U.S. Army Corps of Engineers.

purpose of the pilot project was to obtain lessons learned and incorporate them into the remaining locations installing advanced meters. The completion date for the pilot project was July 31, 2012. When Recovery Act funds became available, NAVFAC SW officials decided not to wait for completion of the Naval Base Ventura County project to capture the lessons learned from the pilot project and submitted the planning documents necessary to receive Recovery Act funding to award nine task orders.

The Specialty Center Acquisition NAVFAC (SCAN) awarded the AMI task orders, and NAVFAC SW administered the contract. This AMI project consisted of nine task orders located throughout the Southwest region. See Appendix C for a depiction of the organizational structure for the AMI project and a description of each office's roles and responsibilities.

AMI System Monitors Consumption

The AMI system is comprised of a meter (electric, gas, water, or steam), communication, and meter data management. The meter has multiple communication protocols, two-way communication that has wired or wireless Ethernet accessibility, and data acquisition system to capture and retrieve metering data. The AMI system records customers' energy consumption; collects metering data in 15-minute intervals; retrieves electric, gas, water, and steam meters' data at least every 4 hours; and transports the information back to a centralized data repository. The figure below shows a picture of the advanced electrical meter installation at Naval Base Point Loma, California.

**Figure. Advanced Electrical Meter Installation
at Building 215 of Naval Base Point Loma**



Source: DoD Office of Inspector General

NAVFAC Needs Better Controls for Managing the AMI Project

DoD Instruction 5010.40, "Managers' Internal Control Program (MICP) Procedures," July 29, 2010, requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that the programs are operating as intended and to evaluate the effectiveness of the controls. We identified internal control weaknesses regarding planning, contractor's performance, and reporting. Specifically, NAVFAC SW officials expedited critical planning steps to secure Recovery Act funds for the project. Further, NAVFAC officials were unclear about their roles and

responsibilities for submitting the plan of implementation to the Secretary of Energy. In addition, NAVFAC SW officials did not have an effective project and design managers to oversee the contractor's performance. The contracting officer decided not to include a liquidated damages clause in the task orders. Finally, NAVFAC officials did not detect and correct the contractor's reporting errors during their data quality review and did not include effective procedures to verify the reasonableness of the estimated number of jobs reported by the contractor. We will provide a copy of the final report to the senior official responsible for internal controls at NAVFAC SW.

Finding A. AMI Project Was Not Properly Planned

NAVFAC officials did not properly plan the AMI project. Specifically,

- NAVFAC SW officials did not prepare necessary documentation, such as an adequate economic analysis, detailed cost estimates, and National Environmental Policy Act (NEPA) documents, because they expedited the DD Form 1391, “Military Construction Project Data,” preparation and review process to secure Recovery Act funds for the project; and
- NAVFAC officials did not prepare a plan for Navy’s submittal to the Secretary of Energy regarding how the agency would implement the advanced meters, as required by EPACT 2005 because they were unclear about their roles and responsibilities for meeting the EPACT 2005 requirements.

As a result, the Navy lacks reasonable assurance that \$24.8 million of Recovery Act funds were appropriately justified and the installation of the meters was properly planned.

Improvements Needed for Planning Requirements

NAVFAC SW officials did not adequately prepare documentation to support the AMI project. Naval Facilities Publication-442, “Economic Analysis Handbook,” October 1993 identifies a six-step approach for developing an economic analysis: (1) define the objective, (2) generate alternatives, (3) formulate assumptions, (4) determine costs and benefits, (5) compare costs and benefits and rank alternatives, and (6) perform sensitivity analysis. Additionally, the Chief of Naval Operations Instruction (OPNAVINST) 11010.20G, “Facilities Projects Instruction,” October 14, 2005, requires supporting documentation, such as a detailed cost estimate and NEPA documents, to fully justify sections on the DD Form 1391. However, NAVFAC SW officials did not fully meet these planning requirements.

Economic Analysis Was Inadequately Prepared

Although NAVFAC SW officials generated alternatives, formulated assumptions, and performed a sensitivity analysis, they did not complete three of the six steps required for developing an economic analysis. NAVFAC SW officials did not define the objective, determine and compare costs and benefits, and rank alternatives. NAVFAC SW officials should have developed a well-defined objective statement that incorporated an easily measurable standard of accomplishment. Also, NAVFAC SW officials should have determined, compared, and ranked the costs and benefits once assumptions² were

²Assumptions are explicit statements used to describe the present and future environment. Examples of assumptions include the discount rate, functional life of the utility meters, and the usefulness of the meters.

formulated. Without completing these steps, NAVFAC SW officials could not ensure they selected the best alternative.

Detailed Cost Estimates Not Developed

NAVFAC SW officials did not prepare detailed cost estimates to support the DD Form 1391 for the AMI project. OPNAVINST 11010.20G, section 2.2.10 states “detailed cost estimates shall be accurately reflected in block 9 of the DD Form 1391 (special project document), itemizing specific quantities and unit costs for each item rather than using lump sum costs.” Although block 9 of the DD Form 1391 included a lump sum of \$24.8 million for the AMI Southwest region, NAVFAC SW officials could not provide supporting documentation for the \$24.8 million. Without a detailed cost estimate, NAVFAC SW cannot verify that the costs used for decisionmaking were accurate.

NEPA Documents Not Prepared for the AMI Project

NAVFAC SW officials did not prepare required NEPA documents and attach them to the DD Form 1391 to integrate environmental considerations into decisionmaking. Section 2.2.3 of OPNAVINST 11010.20G lists the NEPA documents as part of the documentation needed to support the DD Form 1391. According to Secretary of the Navy Instruction 5090.6A, “Environmental Planning for Department of the Navy Actions,” April 26, 2004, the intent of NEPA is to ensure that environmental issues are fully considered and incorporated into the Federal decisionmaking process to address significant impact of the proposed action on the environment. The Instruction requires that the NEPA be initiated as soon as possible to be an effective decisionmaking tool. Although NAVFAC officials could have used a Categorical Exclusion (CATEX)³ to exclude a proposed action from further analysis under NEPA, they did not prepare the CATEX for eight of the nine task orders. Point Loma was the only Facilities Engineering Acquisition Division (FEAD) to prepare a CATEX. NAVFAC SW officials stated that they could not pursue a CATEX until they completed a 100 percent design and received a more detailed scope. When NAVFAC SW received the 100 percent design, they prepared the remaining eight CATEX, which were prepared over a year after the submission of the DD Form 1391. By not completing the NEPA documents to support the DD Form 1391, NAVFAC SW officials could not consider any adverse impact of the AMI project on the environment.

According to a NAVFAC official, “the attachment of the actual NEPA document to the DD Form 1391 document at the time of submission was not required based on the accelerated requirements of the funding source.” According to the “Department of Defense Facilities, Sustainment, Restoration, and Modernization Program Plan,” May 15, 2009, the planning and design phase focused on “shovel ready” projects identified in the Department’s Expenditure Plan on March 20, 2009. The designation

³CATEX is a published category of actions that do not have a significant impact on the human environment under normal circumstances. As a result, those actions do not require either an environmental assessment or an environmental impact statement.

“shovel ready” meant that planning was already completed on a project level. However, NAVFAC officials did not provide a waiver to show they were exempted from completing this critical planning step to support the DD Form 1391.

Planning Process Was Expedited

NAVFAC SW officials expedited the DD Form 1391 preparation and review process to secure Recovery Act funds for the project. The enactment of the Recovery Act on February 17, 2009, required DoD to submit a Facilities Sustainment, Restoration, and Modernization expenditure plan within 60 days. DoD released the expenditure plan on March 20, 2009, to comply with Recovery Act guidance. Subsequently, the Office of the Deputy Under Secretary of Defense, Installations & Environment and the Office of the Under Secretary of Defense, Comptroller issued joint guidance requiring the Services to submit the Facilities Sustainment, Restoration, and Modernization expenditure plan by March 27, 2009. To meet the 60-day requirements, on March 10, 2009, NAVFAC SW officials prepared and submitted planning documentation for the AMI project to the Commander, Naval Installations Command, to ensure the AMI project was included in the expenditure plan to receive Recovery Act funding. There is no recommendation to correct the planning documents deficiencies because the documents were submitted, the project received Recovery Act funding, and installation of the meters had begun.

NAVFAC Generally Complied With EPACT 2005 Requirements

NAVFAC officials generally complied with the EPACT 2005 requirements. The overall goal of the EPACT 2005 is to reduce energy consumption by 20 percent per gross square foot in Federal buildings from FY 2006 through FY 2015. One of the three requirements to support the overall goal is to require each agency to submit an implementation plan for advanced meters to the Secretary of Energy. NAVFAC officials complied with two of the requirements in EPACT 2005. NAVFAC officials ensured that the contractor installed advanced meters to the maximum extent practical. NAVFAC officials also ensured that the contractor installed metering data for buildings or facilities responsible for 95 percent of an installation’s total electric consumption and 75 percent of the installation’s total water and gas consumption. NAVFAC officials selected these facilities based on consumption data related to buildings’ energy usage during a fiscal year. In addition, NAVFAC officials participated in establishing guidelines for AMI to support the overall energy reduction goal as required by EPACT 2005.

Neither Navy officials nor NAVFAC personnel submitted the implementation plan to the Secretary of Energy as required by EPACT 2005. The implementation plan should have explained how the Navy would designate personnel primarily responsible for achieving the advanced meter requirements and demonstrate and document any finding that advanced meters were not practical. Although NAVFAC met two of the three requirements, without this plan, Navy officials cannot show how they will achieve the energy reduction goal as required by EPACT 2005.

Neither Navy officials nor NAVFAC personnel submitted the implementation plan to the Secretary of Energy...

NAVFAC Unclear on Roles and Responsibilities Under the EPACT 2005

NAVFAC officials were unclear about their roles and responsibilities for meeting the EPACT 2005 requirements, such as preparing and submitting a plan to the Secretary of Energy describing how the agency would implement the advanced meters. According to the ESC project manager, he was not aware that NAVFAC ESC was responsible for preparing a plan or providing input in response to the EPACT 2005. Nonetheless, the ESC project manager stated the AMI Program Office at NAVFAC Headquarters was responsible for preparing the Plan for Implementation. According to the AMI program manager at NAVFAC Headquarters, he did not prepare the plan. He referred the audit team back to the ESC project manager to obtain a copy of the plan. Neither the ESC project manager nor the AMI program manager requested clarification on who was responsible for preparing the plan. On February 17, 2012, a NAVFAC Headquarters official stated that the Headquarters program manager should have referred this question to the supported command at the Navy and Marine Corps Headquarters rather than the subordinate executing agent. For clarity, NAVFAC officials should implement guidance defining the roles and responsibilities for project and program managers to comply with the EPACT 2005 requirements.

Conclusion

NAVFAC SW officials did not adequately follow planning requirements to ensure that the AMI project receives proper planning and that Recovery Act funds were appropriately justified. NAVFAC officials did not properly support the cost and quantities in the DD Form 1391 and did not meet the EPACT 2005 planning requirement. As a result, Navy lacks reasonable assurance that \$24.8 million of Recovery Act funds have been appropriately justified and the installation of the meters was properly planned.

Management Comments on the Finding and Our Response

NAVFAC SW Comments

The Commander, NAVFAC (the Commander), responding on behalf of the Commanding Officer, NAVFAC SW, did not agree with some sections of Finding A. Specifically, the Commander disagreed with page 6 of the Finding. He stated that OPNAVINST 11010.20G did not establish a rigid requirement to include NEPA documentation in support of a 1391. He also stated that CATEXes for all actions were not necessary to comply with NEPA and were consistent with standard practice. The Commander further stated that the environmental values were included in project discussions from the earliest conceptual stages. Additionally, that OPNAVINST 11010.20G does list NEPA documents, among other documents, as “[c]ommon attachments” to a 1391, and that it does not say that any of the documents listed are required in every case and that there may be other common documents. The Commander stated that the goal is not to assemble a certain list of documents, but to fully communicate the location, scope, complexity, cost, and urgency of the project.

The Commander stated that leaving CATEXes out of the 1391 package did not violate any requirements and it is common practice not to have complete NEPA documentation ready at such an early stage of planning because it would not be practical and the expense would be exorbitant. He further explained that this is a major reason that NEPA requires some type of proposal ready so that a meaningful environmental review can be done, and “effort and dollars are not squandered analyzing remote and speculative possibilities.” Additionally, he stated that NEPA regulations at 40 CFR 1502.5(a) (2011) says that the “go-no go” stage is the point where the NEPA document needs to be prepared. He explained that the Navy generally interprets “go-no go” as the point when the decision is being made to implement or not to implement a proposal; that is usually the point of award for a contract or a work order, but it is a fact specific determination.

The Commander stated that in the present case of the AMI project, environmental impact considerations drove the decision as to which projects they would implement. He explained that there was a need to move expeditiously with not enough time to do an Environmental Assessment or an Environmental Impact Statement. He also stated that given the minor nature of many of the proposed actions, it was easy to see that many of the actions qualified for CATEXes and could go forward in the “go-no go” decision context. He further explained that any action with potential significant adverse effects to natural or cultural resources could not go forward. The Commander said that with input from environmental experts, these decisions could have easily been made without final written CATEXes. However, written CATEXes were in place by the time the “go-no go” decision was made.

Our Response

We determined that NAVFAC SW officials did not prepare the required NEPA or CATEX documents in time for them to be effective decision making tools. Although we agree with the Commander’s comment that OPNAVINST 11010.20G, section 2.2.3 “Special Project Documentation” (the instruction) did not establish a “rigid” requirement to provide NEPA documents in support of the DD Form 1391, it did establish a requirement to provide NEPA documentation to the extent necessary to fully communicate the location, scope, complexity, cost, and urgency of the project. The instruction lists the NEPA documents and other attachments that commonly are required to support the DD Form 1391. Therefore, to show that NAVFAC SW officials fully considered and incorporated environmental issues into the decision making process at the earliest possible time, NEPA documentation, or CATEXes, should have accompanied the DD Form 1391. We agree that the lack of the CATEXes attached to the relevant DD Form 1391 was not necessary to comply with NEPA but rather a requirement to comply with the instruction. The Commander stated that environmental values were included in project discussions from the earliest conceptual stages; however, the CATEXes provided to the audit team were prepared and approved from 4 months to 2 years after the submission of the DD Form 1391. The Commander correctly cited the requirements stated in the instruction, and we agree that the goal is not to assemble a certain list. However, the instruction identifies 10 common attachments required to fully communicate the location, scope, complexity, cost and urgency of the project. Although

not all the common attachments listed may be necessary to comply with the instruction, the NEPA documentation or CATEXes should have been prepared and attached to the DD Form 1391.

SECNAVINST 5090.6A states that the NEPA process should be initiated at the earliest possible time to be an effective decisionmaking tool in the course of identifying a proposed action. Further, it states that a CATEX may be used to exclude a proposed action from further analysis. Since NAVFAC SCAN personnel awarded the AMI base contract in September 2008 and NAVFAC SW submitted the DD Form 1391 for approval in March 2009, the NEPA documentation should have been completed either before the award date or submission of the DD Form 1391 to be an effective decisionmaking tool. The Commander did not fully cite the NEPA regulations contained in 40 CFR sec. 1502.5. Specifically, 40 CFR sec.1502.5 (2011) states that an agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or presented with a proposal so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. Further, it states the statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process rather than to rationalize or justify decisions already made. This regulation appears to align with the SECNAVINST 5090.6A as it pertains to the preparation of an environmental impact statement and the timing of when such statement should be prepared to comply with NEPA.

In addition, NAVFAC's interpretation of "go-no go" is not consistent with Navy guidance. We agree that "go-no go" is the point when NAVFAC SW officials decide whether to implement or not to implement a proposal. We disagree that this is usually the point of award for a contract or a work order. Specifically, 40 CFR sec. 1508.23 (2011) states that proposal exists at that stage in the development of an action when an agency has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal. Therefore, the point of award for a contract follows an agency's decision to implement a proposal. In this case, NAVFAC SCAN awarded the AMI contract in September 2008, after NAVFAC made the decision to install advanced meters in the Southwest region and submit documentation for Recovery Act funds. We also agree with the Commander's acknowledgment that the proposed actions qualified for CATEXes and could go forward in the "go-no go" decision. However, the CATEXes were not in place by the time NAVFAC SW officials made the "go-no go" decision. Even following the Commander's rationale and explanation of when NEPA documentation should be prepared, NAVFAC SW did not prepare and approve the CATEXes at the time of the award. Instead, NAVFAC SW officials prepared and approved the CATEXes about 10 months to 3 years after the contract award. Although NAVFAC SW officials obtained and considered input from an environmental expert, we disagree that NAVFAC SW could have made these decisions without final written CATEXes, which NAVFAC SW should have attached to the DD Form 1391 as stated in OPNAVINST 11010.20G, section 2.2.3.

Recommendations, Management Comments, and Our Response

Redirected Recommendation

As a result of management comments, we redirected draft Recommendation A to the Commander, Naval Facilities Engineering Command.

A. We recommend the Commander, Naval Facilities Engineering Command , issue guidance clearly defining the roles and responsibilities to comply with the requirements of Public Law 109-58, “Energy Policy Act of 2005,” August 8, 2005.

NAVFAC SW Comments

The Commander, NAVFAC, responding on behalf of the Commanding Officer, NAVFAC SW, disagreed with the recommendation, stating that NAVFAC SW was not responsible for submitting the implementation plan and did not issue the contract. Therefore, it is outside of the NAVFAC SW Commanding Officer’s roles and responsibilities to issue this guidance. The Commander also stated that the Office of the Secretary of Defense and the Secretary of the Navy conveyed clear direction for energy-related projects. The Commander explained the AMI projects, and all their shortcomings, were discussed with the Principal Deputy Under Secretary of Defense Comptroller and the Director of Facility Investment and Management, Office of the Deputy Under the Secretary of Defense Installations and Environment during the vetting process. However, the draft report downplays the short timeline that NAVFAC was given to develop a priority list and get it through the approval process, which cleared all the way through the OMB and the Office of the Vice President. A NAVFAC Headquarter official also provided a comment within the Commanding Officer’s response stating that he indicated before the DoD OIG audit that NAVFAC identified program and project management shortfalls and had taken corrective actions. The NAVFAC Headquarter official added that he requested the DoD OIG team to acknowledge this in the report and the fact that NAVFAC already addressed this issue.

Our Response

Comments from the Commander, NAVFAC, were partially responsive. We agree that NAVFAC SW was not responsible for submitting the implementation plan and did not award the contract. We redirected Recommendation A to the Commander, NAVFAC. Although, the Commanding Officer, NAVFAC SW, was not responsible for the recommended action, he provided comments to this recommendation. Additionally, on February 16, 2012, NAVFAC HQ officials stated that the program manager at NAVFAC HQ should have requested clarification from the Department of the Navy and the Marine Corps Headquarter on who was responsible for preparing the plan.

Although direction and shortcoming may have been discussed with officials in the Office of the Deputy Under Secretary of Defense, NAVFAC officials could not provide documentation to support this claim. The short timeline the Commander discussed does

not impact why the Department of the Navy did not adhere to the EPACT 05 requirement for preparing and submitting an implementation plan. In this report, we did not discuss the timeliness of NAVFAC's submission of the plan to the Department of Energy. This report discusses that NAVFAC officials did not submit an implementation plan, as required by EPACT 05. As of the issuance of this report, NAVFAC officials have not provided documentation to show that they submitted the plan. During a meeting on February 16, 2012, a NAVFAC HQ official acknowledged that they identified program and project management shortfalls and issued corrective actions. We requested documentation to validate this assertion, but never received documentation to substantiate that shortfalls were identified and corrective actions were taken. Therefore, we request the Commander, NAVFAC, to provide comments by October 10, 2012.

Finding B. Oversight of the Contractor's Performance Was Not Adequate

NAVFAC officials did not properly oversee the installation of the advanced meters. Specifically,

- NAVFAC SW officials did not develop quality assurance (QA) plans for the surveillance of the AMI project. For example, they did not develop design and construction QA plans for six of the nine task orders. NAVFAC SW officials stated that they did not complete QA plans because they were awaiting the contractor's final design packages. As a result, NAVFAC SW officials did not have reasonable assurance that the meters installed for the AMI project will conform to contract requirements.
- NAVFAC SW officials did not ensure the contractor completed the nine task orders for the AMI project within agreed upon milestones. This occurred because NAVFAC SW did not have an effective project manager to oversee the contractor's performance. As a result, the nine task orders missed the renegotiated completion date, and seven of the nine are at risk of missing the EPACT 2005 mandate requiring the installation of all meters by October 1, 2012.
- SCAN officials did not insert FAR clause 52.211-12, "Liquidated Damages," in eight task orders. Naval Facilities Acquisition Supplement (NFAS), subpart 11.5, "Liquidated Damages," March 2006, states that the appropriate liquidated damages rate shall be included in all firm fixed-price construction contracts exceeding the simplified acquisition threshold. The contracting officer, who has since left SCAN, decided that the clause should not be included in the task orders, for reasons that apparently were never documented in the contract file. As a result, the absence of the liquidated damages clause is a factor that may have contributed to the delays in the AMI project.

Oversight of Metering Infrastructure Needs Improvement

NAVFAC SW officials did not properly oversee the installation of advanced meters. According to FAR subpart 46.4, "Government Contract Quality Assurance," QA surveillance plans should be prepared in conjunction with preparing the statement of work to determine that the supplies or services conform to contract requirements. The plans should specify all work requiring surveillance and the method of surveillance. In addition, OMB Memorandum M-09-10, "Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009," February 18, 2009, require agencies to actively monitor contracts to ensure performance, cost, and schedule goals are met, including:

- implementing quality assurance procedures established for contracts;
- documenting timely inspection and acceptance of deliverables; and

- using all available tools to identify and remedy deficiencies related to contractor performance, cost, and schedule.

NAVFAC SW officials did not meet the OMB memorandum requirements for preparing design and construction QA plans. Those plans would have included QA procedures to identify and correct deficiencies related to the contractor's performance, cost, and schedule, such as missed milestones. Additionally, not including the liquidated damages clause limited the remedies available to address deficiencies related to the contractor's performance.

Quality Assurance Plans Not Prepared

NAVFAC SW officials did not develop QA plans for the surveillance of all task orders issued under the AMI project. For example, they did not develop design and construction QA plans for six of the nine task orders, valued at about \$13.5 million. The NAVFAC Business Management System states the design manager is responsible for preparing a design QA plan and the construction manager is responsible for preparing a construction QA plan. The purpose of a QA plan is to document the surveillance of the contractor's definable features of work and quality control program to ensure compliance with contract specifications. A definable feature of work is part of the project, and if not performed exactly as stated in the contract, will cause deficiencies that could prevent the user from performing their assigned mission. For the six task orders (task orders 6, 10, 12, 14, 15, and 16), NAVFAC SW officials could not show how they would provide design oversight. Specifically, they could not show how they would document site visits, review submittals, and conduct pre-construction meetings. The purpose of the design oversight is to provide reasonable assurance that the contractor's work complies with contract specifications. Also, NAVFAC SW officials did not identify definable features of work for construction oversight, such as installing electric, water, and gas meters. However, NAVFAC SW officials did develop QA plans for task orders 7, 8, and 11. Those plans identified definable features of work and design oversight to ensure contractor meets contract specifications. Table 2 (page 15) identifies the value of each task order and indicates whether NAVFAC SW prepared a QA plan.

Table 2. FEAD Development of Design and Construction QA Plans

Task Order	FEAD Site	Value	Plan Prepared for Design and Construction Oversight
Task Order 6	Coronado	\$6,597,901	No
Task Order 7	San Diego	1,965,010	Yes
Task Order 8	Point Loma	2,609,487	Yes
Task Order 10	Seal Beach	1,321,110	No
Task Order 11	China Lake	4,221,767	Yes
Task Order 12	El Centro	1,217,843	No
Task Order 14	Lemoore	2,246,322	No
Task Order 15	Monterey	443,182	No
Task Order 16	Fallon	1,673,047	No
Value of Task Orders		\$22,295,669	

Design Packages Were Unavailable for Preparing QA Plans

NAVFAC SW officials did not complete the design and construction QA plans because they were awaiting the contractor's final design packages. The NAVFAC Business Management System requires the design manager to obtain the contractor's final designs to allow design production to continue on schedule. However, NAVFAC SW officials stated that they did not appoint a design manager for the SW AMI task orders to ensure that the design process continued as planned. NAVFAC SW officials stated that they might not have appointed a design manager because SCAN awarded the task orders when normally NAVFAC Integrated Product Teams⁴ award contracts. Not appointing a design manager contributed to the ineffective monitoring of the project milestones. On February 22, 2012, NAVFAC officials provided the remaining six QA plans after our site visit. However, the six FEADs did not follow the NAVFAC Business Management System process for preparing design and construction QA plans. Instead, the six FEADs received instruction from a NAVFAC SW official to review and change the names of an existing QA plan to reflect their respective offices. The Commanding Officer, Naval Facilities Engineering Command Southwest, should review these QA plans to ensure they complied with the NAVFAC Business Management System for preparing design and construction QA plans.

Monitoring of Project Milestones Was Ineffective

NAVFAC SW officials did not ensure the contractor completed the AMI project within agreed upon milestones. Specifically, NAVFAC SW officials did not properly monitor the contractor's performance to ensure the AMI project was completed and the Contract

⁴ Integrated Product Teams serve as the primary execution platforms within the Facilities Engineering command and are accountable for product and service cost, quality, and schedule.

Data Requirements List⁵ (CDRL) submittals were provided within the agreed upon milestones. FAR subpart 11.5, “Liquidated Damages” states, “the time of delivery or performance is such an important factor in the award of a contract that the Government may reasonably expect to suffer damage if the delivery or performance is delinquent.” NAVFAC SCAN officials prepared a single solicitation and awarded eight of the nine task orders⁶ for the SW region, but the contractor executed the task order using a regional approach.⁷ When NAVFAC SW officials noticed slippages in the AMI timeline for completion, NAVFAC SW officials later renegotiated with the contractor to grant time extensions, which also resulted in the contractor operating under a task order approach.⁸

Milestones Were Missed Under the Regional Approach

The regional approach affected the contractor’s ability to meet milestones at all FEAD sites. For instance, Point Loma encountered problems (for example, meter selection, test switch, and trenching interpretation) that affected the installation of advanced meters at the remaining sites. Point Loma was the first FEAD to begin the survey and design process for AMI. While Point Loma does not represent all of the FEAD sites, the problems encountered there were common throughout the entire AMI Southwest region. The Navy’s AMI goal was to have a standardized system at all sites, and as such, SCAN officials prepared the AMI contract as a single solicitation and awarded eight task orders. Further, SCAN officials made incorrect assumptions regarding site conditions. For example, SCAN officials assumed all sites had complete virgin soil;⁹ but some sites had 50 percent asphalt and 50 percent soil, requiring more trenching than the contract required. NAVFAC SW officials were to ensure the contractor installed 2,334 advanced meters for eight FEAD sites by August 20, 2011, and 173 advanced meters for one FEAD site by March 23, 2012. Because NAVFAC SW officials did not properly exercise due diligence, the contractor missed milestones and did not deliver required CDRL submittals on time; therefore, the period of performance date became unattainable.

The project delivery schedule required the contractor to submit CDRLs to NAVFAC SW officials by the agreed upon estimated completion date. As described in Table 3, all FEAD sites did not complete two required CDRL submittals and did not submit five CDRLs on time. Specifically, the contractor delivered a Program Management Plan, Quality Control Plan, Maintenance Plan, Preliminary Design Package, and conducted Site Surveys 1 to 2 years after the required completion date. However, the contractor did

⁵An authorized list that includes essential data and deliverable data requirements from a contract or solicitation that can also be found in the contract’s statement of work.

⁶NAVFAC SW awarded task order 16, Fallon, approximately 1 year after task orders 6 through 8, 10 through 12, 14, and 15.

⁷Under the regional approach, the contractor was responsible for executing 2,507 advanced meters at all FEAD sites, based on a standardized architecture, and leveraging the best approach to address unforeseen site conditions and possible delays that may occur.

⁸The task order approach is an approach NAVFAC officials used to execute at all FEAD sites based on a standardized architecture. Under this approach, site-specific conditions or delays at one site will not impede or hinder the progress at remaining sites.

⁹Virgin soil is either clay, loam, gravel, marshy ground, or sand, in its natural condition.

not deliver a Cost Budget Plan for all FEAD sites. Table 3 describes the missed milestones that occurred at all FEAD sites.

Table 3. Milestones Missed Under the Regional Approach

Features of Work/Work Breakdown Schedule	Original Estimated Start Date	Original Estimated Completion Date	Date Action Item Completed or Not Completed
Develop Program Management Plan	Aug 24, 2009	Sep 18, 2009	Nov 8, 2010
Develop Cost Budget	Aug 24, 2009	Aug 28, 2009	Not Completed
Develop Program Schedule	Aug 24, 2009	Jul 21, 2011	Not Completed
Develop QC Plan	Aug 24, 2009	Sep 18, 2009	Feb 21, 2011
Develop Maintenance Plan	Feb 1, 2010	Mar 8, 2010	Aug 17, 2011
Prepare Preliminary Design Package	Sep 28, 2009	Dec 4, 2009	Apr 27, 2010
Conduct Detailed Site Survey	Sep 7, 2009	Feb 1, 2010	Apr 27, 2010

Since the contractor used a regional approach to install the meters for the nine task orders, NAVFAC SW officials and the contractor adjusted the milestones on a monthly basis to compensate for the site delays and for submitting required CDRLs that they missed. Although NAVFAC officials and the contractor agreed to adjust the project delivery schedules to compensate for the delays missed under the regional approach, they still missed milestones at all FEAD sites while operating under the task order approach.

Missed Milestones Continued Under the Task Order Approach

NAVFAC SW officials renegotiated an agreement with the contractor to operate under a task order approach for each site because the contractor continued to miss milestones under the regional approach. Accordingly, NAVFAC SW officials updated the delivery schedule to reflect the new milestones. In February 2011, NAVFAC SW officials provided an adjusted delivery schedule (renegotiated schedule) outlining new start and completion dates for each FEAD. The renegotiated schedule was a document NAVFAC SW and the contractor used to show the results of their renegotiation of milestones. Based on our review, the nine FEADs did not meet the renegotiated scheduled milestones. However, NAVFAC officials did a contract modification for four FEADs (task order 8, 10, 14, and 15); in which, the renegotiated dates did not reflect the modification dates. According to a NAVFAC official, as of February 2012, the nine FEADs did not complete their AMI projects. Two FEADs (Point Loma and San Diego) completed the installation phase; however, the installation for these two sites was about 2.5 and 3.5 months late, respectively. China Lake advanced meters installation was scheduled for completion on March 31, 2012, but audit documentation provided as of January 31, 2012, showed 0 percent completion. Because the ability to meet the renegotiated milestones was dependent on whatever conditions the contractor encountered at the site, it was improbable that China Lake would meet its renegotiated milestone date. Table 4 (page 18) identifies the nine FEAD sites and identifies whether each site met its milestones.

Table 4. Milestones for the Task Order Approach

FEAD Site	Initial Estimated Start Date	Renegotiated Estimated Completion Date	Were Renegotiated Milestones Met
Coronado	Aug 24, 2009	Dec 31, 2011	No
San Diego ¹	Aug 24, 2009	Aug 15, 2011	No
Point Loma ²	Aug 24, 2009	Jun 15, 2011	No
Seal Beach	Aug 24, 2009	Dec 15, 2011	No
China Lake	Aug 24, 2009	Mar 31, 2012	No ³
El Centro	Aug 24, 2009	Sep 30, 2011	No
Lemoore	Aug 24, 2009	Nov 15, 2011	No
Monterey	Aug 24, 2009	Dec 15, 2011	No
Fallon ⁴	Sep 30, 2010	N/A	No

¹As of January 31, 2012, San Diego's AMI project installation phase is 100 percent completed.

²As of January 31, 2012, Point Loma's AMI project installation phase is 100 percent completed.

³As of January 31, 2012, China Lake did not install meters, but the installation was estimated for completion by March 31, 2012.

⁴NAVFAC SW awarded Task Order 16, Fallon, approximately 1 year after task orders 6 through 8, 10 through 12, 14, and 15. However, a NAVFAC SW official provided documentation stating that Fallon is potentially in trouble.

Oversight Over Managing Milestones Was Ineffective

NAVFAC SW officials did not have an effective project manager to oversee the contractor's performance. The project manager at NAVFAC ESC oversees all AMI projects for the Navy. The ESC project manager stated that his roles and responsibilities for overseeing the project execution were limited and extended only to making recommendations regarding AMI issues to each FEAD. The ESC project manager also stated that the administrative contracting officer is ultimately responsible for handling contractor issues and disputes. Further, NAVFAC Headquarters officials stated that the administrative contracting officer is responsible for appointing a project manager at each FEAD to manage the daily execution of its own project. NAVFAC SW officials disagreed, stating that NAVFAC ESC have an appointed project manager who should be managing the AMI SW project from "cradle to grave." The ESC project manager is also the appointed contracting officer representative. According to the contracting officer representative appointment letter, he is responsible for notifying the contracting officer of potential performance problems. The letter also states that in the event of contractor delay or failure to perform, he needs to notify the contracting officer, so he or she can determine the cause and recommend the appropriate corrective or preventive measures. The NAVFAC Commanding Officer should have clearly articulated the roles and responsibilities to the project manager, so the project manager could have ensured the contractor was executing the project according to the agreed upon project milestones.

AMI Base Contract Made Liquidated Damages Clause Optional

SCAN officials did not insert FAR clause 52.211-12, “Liquidated Damages,” in eight of the nine task orders. The AMI base contract stated that liquidated damages will be evaluated and included at the task order level as needed. Although the AMI contract provided NAVFAC with the discretion to include the liquidated damages clause, DFARS subpart 211.5, generally requires construction contracts exceeding \$650,000 to include the liquidated damages clause. In addition, Naval Facilities Acquisition Supplement (NFAS), subpart 11.5, “Liquidated Damages,” March 2006, states that the appropriate liquidated damages rate shall be included in all firm fixed-price construction contracts exceeding the simplified acquisition threshold.

The task orders did not include the liquidated damages clause identifying the amount the contractor would pay for each calendar day they missed milestones. However, the task order 16 included the amount of liquidated damages that NAVFAC could have collected if the contractor missed milestones. The amount was consistent with the instructions in NFAS subpart 11.5 on how to calculate liquidated damages. Although the liquidated damages amount in task order 16 was consistent with the Navy’s guidance, SCAN officials modified the amount from \$787 to \$250. SCAN officials modified the liquidated damages amount because the contracting officer did not amend the liquidated damages amount that was included in the original request for proposal to reflect the increase in the contract’s award price. For the eight task orders, we compared the period of performance for the contract’s completion date to the date we received the completion status, which was February 17, 2012, and found approximately 724 missed milestones days. We also compared the date of the modification for time extension (only for those task orders that prepared a modification for time extension) to the date we received the completion status and found 343 missed milestones days. FAR clause 52.211-12(a) states, “if the contractor fails to complete the work within the time specified in the contract, the contractor shall pay liquidated damages to the Government in the agreed amount for each calendar day of delays until the work is completed or accepted.

Liquidated Damages Language Not in Task Orders

SCAN officials did not ensure the contracting officer included the liquidated damages clause in eight task orders, as required by NFAS subpart 11.5 and as generally required by DFARS subpart 211.5. The contracting officer, who is no longer with SCAN, decided that the clause should not be included in the task orders, but appears not to have documented the reason for this decision. SCAN officials stated that they did not know why the contracting officer made the decision not to include the clause. However, FAR subpart 11.5(1) states,

[t]he contracting officer must use liquidated damages clauses only when [t]he time of delivery or timely performance is so important that the Government may reasonably expect to suffer damage if the delivery or performance is delinquent; and [t]he extent or amount of such damage would be difficult or impossible to estimate accurately or prove.

Timely performance by the contractor is important because the primary goal of the Recovery Act was to execute projects quickly that will create and retain jobs. More importantly, EPACT 2005 requires meters in all Federal buildings by October 1, 2012. In addition, the extent of damage was difficult to estimate accurately because, according to a NAVFAC official, the contracting officer was unable to forecast harm associated with late delivery and too many unknowns existed at time of award to estimate potential damages. NAVFAC SW should have included the clause in the eight task orders to ensure the contractor met AMI milestones.

Conclusion

NAVFAC SW officials' lack of surveillance over the contractor resulted in the improper execution of the AMI project. Without a QA plan and an effective project manager to oversee the contractor's performance, NAVFAC SW cannot ensure that the design and construction for six of the nine task orders, valued at \$13.5 million, complied with contract requirements and that the nine task orders would be completed according to agreed upon milestones. Also, the absence of the liquidated damages clause is a factor that may have contributed to the delays in the AMI project.

Recommendations, Management Comments, and Our Response

Redirected and Renumbered Recommendations

As a result of management comments, we redirected draft Recommendation B.4 to the Commander, NAVFAC and renumbered the recommendations. Draft Recommendation B.4 has been renumbered as Recommendation B.1 and draft Recommendations B.1, B.2, and B.3 have been renumbered to B.2.a, B.2.b, and B.2.c, respectively.

B.1. We recommend that the Commander, Naval Facilities Engineering Command review the performance of the official responsible for not including the liquidated damages clause. Based on the results, consider any corrective actions, as appropriate.

NAVFAC SW Comments

The Commander, NAVFAC, responding on behalf of the Commanding Officer, NAVFAC SW, stated that NAVFAC SW did not award the original task orders for the AMI contract. The Commander also disagreed with the report conclusion, that the Government forego over \$200,000 in potential collection of damages, which he stated is factually incorrect, and the estimates of liquidated damages in the report are inaccurate and unsupportable based on the facts in this report. The Commander stated that liquidated damages are not punitive, but compensate the Government for probable damages. The liquidated damages rate must be a reasonable forecast of just compensation for the harm caused by late delivery or untimely performance of the particular contract action. He further stated that even if the clause was in the task orders, to collect potential damages, the contractor had to be 100 percent at fault; however, the

fault was both the Government's and the contractor's. Furthermore, the Commander stated that the mere exclusion of the liquidated damages clause does not negate the Government's ability to collect damages; if the Government suffers actual damages due to the contractor's late completion, the Government can seek damages from the contractor through an affirmative claim.

Our Response

Comments from the Commander, NAVFAC, were partially responsive. We agree with the Commander that NAVFAC SW did not award the original task orders for the AMI contract. NAVFAC SCAN awarded all task orders except task order 16, Fallon. Since NAVFAC SCAN is operationally aligned under NAVFAC, we redirected draft report Recommendation B.4 to the Commander, NAVFAC. Although, the Commanding Officer, NAVFAC SW, was not responsible for the recommended action, he provided comments and we agree with his statement that the mere exclusion of the clause does not negate the Government's ability to collect damages. Therefore, we revised the finding and conclusion to show that the absence of the liquidated damages clause is a factor that may have contributed to the delays in the AMI project.

We also agree with the criteria the Commander used from the FAR. However, NAVFAC SW officials stated that the contracting officer was unable to forecast harm associated with late delivery. Although the contracting officer was unable to forecast harm, as cited on page 20 of this report, DFARS subpart 211.5 generally requires construction contracts exceeding \$650,000 to include the liquidated damages clause. NFAS subpart 11.5 also states that the appropriate liquidated damages rate shall be included in all firm fixed-price construction contracts exceeding the simplified acquisition threshold. Based on these criteria, the AMI contract was required to include the liquidated damages clause, which the contracting officer did include in task order 16. Additionally, the contracting officer should have included the clause because FAR subpart 11.5(1) explicitly states that the contracting officer must use liquidated damages clauses when timely performance is so important that the Government may expect to suffer damages and the extent or amount of such damage would be difficult or impossible to estimate accurately or prove.

On April 28, 2011, a NAVFAC SW official stated that when the contractor began missing milestones, the contractor requested additional funding and time. Also, the NAVFAC SW official stated that they attempted to reach a bilateral liquidated damages agreement with the contractor; however, it was unsuccessful. Therefore, we request the Commander, NAVFAC, provide comments to this recommendation in the final report by October 10, 2012.

B.2. We recommend the Commanding Officer, Naval Facilities Engineering Command Southwest:

a. Require the six Facilities Engineering Acquisition Divisions to review their Quality Assurance plans to ensure they were prepared in accordance with the Naval Facilities Engineering Command Business Management System.

NAVFAC SW Comments

The Commander, NAVFAC, responding on behalf of the Commanding Officer, NAVFAC SW, disagreed with the recommendation, stating that QA plans were completed for all sites since the DoD IG site visit in April 2011 and May 2011. In addition, he believes NAVFAC SW has checks and balances in place to demonstrate an adequate and sufficient QA plan. He explained that NAVFAC SW officials recommended that all locations use the current NAVFAC Business Management System template. The Commander agreed that one NAVFAC SW official shared a QA plan, which he stated is consistent with using lessons learned across the area of operations. The Commander added that NAVFAC SW holds each location accountable for the execution, oversight, and implementation of the work and all locations have personnel that are knowledgeable and competent of implementing the QA plan. He explained that NAVFAC SW officials will use QA plans until the contract is complete and that lessons learned from each location allow the Government to fine-tune the QA plans. The Commander also explained NAVFAC SW officials have shared these adjustments with all locations that are still installing meters.

Our Response

Comments from the Commander, NAVFAC, were nonresponsive. We agree that NAVFAC SW officials provided QA plans since our April 2011 and May 2011 site visits as noted in our report on page 15. However, six FEADs did not provide a QA plan prior to our site visits in April 2011 and May 2011. According to FAR Part 46.401, an agency should develop a QA plan in conjunction with the preparation of the contract statement of work. The QA plan for task order 11 explains that a QA plan is to be prepared as early possible after contract award to ensure the contractor's work complies with contract requirements. The documentation a NAVFAC SW official provided showed that FEADs were not recommended to use the most current template from the NAVFAC SW Business Management System. Instead, a Point Loma official instructed the FEADs to review a provided QA plan and change the names accordingly to their respective FEAD office. In addition, the FEADs were instructed to provide a response before the meeting with the audit team so that a NAVFAC SW official could state in the meeting that all QA plans are completed. After we received the six remaining QA plans, three of the FEAD QA plans provided by NAVFAC SW officials still showed incorrect task order numbers. We request that the Commanding Officer, NAVFAC SW, reconsider the recommendation, and provide additional comments by October 10, 2012.

b. Appoint a project and design manager at each Facilities Engineering Acquisition Division site to provide effective oversight over the design and installation of advanced meters.

NAVFAC SW Comments

The Commander, NAVFAC, disagreed with the recommendation. He stated that a project manager, who is referred to as the construction manager, was appointed to each contract task order to provide oversight for the design and installation of the meters from the start of the project. He also stated that the NAVFAC Southwest team (including a construction manager, administrative contract specialist and a technical subject matter expert) executed each task order project at the associated NAVFAC Southwest Public Works Department and executed the projects consistent with NAVFAC processes. In addition, the Commander stated that NAVFAC Southwest established an operation oversight team to ensure project execution was consistent across NAVFAC Southwest area of responsibility and they coordinated key AMI issues and problems with NAVFAC Headquarters, Naval Facilities Engineering Service Center, and the Specialty Center Acquisition NAVFAC. The Commander further stated that the AMI program and execution team worked together throughout the AMI process to meet the aggressive execution goals of the Office of the Secretary of Defense and the Assistant Secretary of the Navy.

Our Response

Comments from the Commander, NAVFAC, were partially responsive. We agree that NAVFAC SW has a Public Works Department team. However, we disagree that NAVFAC SW appointed a project manager for each task order to provide oversight for the design and installation of meters, and the construction manager at each FEAD is the project manager. According to the Business Management System B-1.4.6.3, "Design-Build Quality Management," January 25, 2011, at the time of design build contract award, the leadership and accountability of the project shift to the construction manager. Nevertheless, the shift did not absolve the project manager and design manager from their roles and responsibilities to oversee the contractor performance.

A NAVFAC SW construction manager informed us that NAVFAC SCAN awarded the contract and did not designate a project manager nor design manager for each FEAD; both are appointed when the NAVFAC SW Integrated Product Team awards contracts. In addition, the construction manager stated that the project manager and design manager are responsible for ensuring the project is complete and assuring the design process is appropriate, respectively. As stated in the report, NAVFAC Headquarters officials informed us that the administrative contracting officer is responsible for appointing a project manager at each FEAD to manage the daily execution of their project. On April 28, 2011, a NAVFAC SW official stated that the appointed project manager should manage the project from "cradle to grave." He also added that NAVFAC SW had to intervene to handle issues regarding contractor delays and performed other project manager functions. He further stated that NAVFAC SW established a team in direct response to the lack of effective management of the AMI project and because

NAVFAC SW had no routine dialogue with the NAVFAC ESC project manager. Therefore, we request the Commanding Officer, NAVFAC SW, reconsider the recommendation, and provide additional comments by October 10, 2012.

c. Review the performance of the project manager responsible for overseeing the contractor performance and the missed milestones. Based on the results, consider any corrective actions, as appropriate.

NAVFAC SW Comments

The Commander, NAVFAC, responding on behalf of the Commanding Officer, NAVFAC SW, disagreed with the discussion on missed milestones, which he stated resulted in incorrect conclusions. The Commander specifically stated that the discussion on missed milestones was based on an incorrect statement that the AMI project was a regional contract. He further stated that the original award consisted of nine standalone contracts and no such NAVFAC SW “renegotiated agreement” took place with the contractor.

In addition, the Commander stated that the missed milestones have been concurrent delays and documented as such by the contracting officials, which NAVFAC SW provided to the DoD OIG through e-mail and discussed in a telephone conversation with the OIG team on February 16, 2012. He stated that the conclusions regarding the missed milestones discussed on page 13 were based solely on our review of the original contract completion dates and not based on any interaction with the field personnel mentioned in the report.

Our Response

Comments from the Commander, NAVFAC, were partially responsive. On pages 15 and 16 of this report, we stated that NAVFAC SCAN officials prepared the AMI contract as a single solicitation and awarded eight stand-alone task orders, and NAVFAC SW awarded one task order. We did not discuss the type of contract awarded, but rather the basis used to execute the contract. This report highlights that the contractor executed the task orders using a regional approach before using a task order approach. Documentation obtained from NAVFAC SW dated February 17, 2010, states that the contractor bid and won the task orders on a regional basis, and the contractor executed its work as such. Additional documentation showed that NAVFAC SW officials informed the contractor on several occasions that they were to operate from a task order approach. However, the contractor continued to operate from a regional approach. NAVFAC SW officials allowed the contractor to conduct its work and operate from a regional approach to their detriment and delay. During our site visit on April 29, 2011, NAVFAC SW officials provided the audit team with a copy of what they considered a renegotiated delivery schedule with new milestone dates that they renegotiated with the contractor, listing the new milestone dates for each site. We used the new milestones, or renegotiated schedule (agreement), as a basis to determine milestone days missed.

We also agree with the Commander's comments that the missed milestones have been concurrent delays that NAVFAC SW officials properly documented with the contracting officials. However, we disagree that interaction with personnel in the field did not take place. We conducted site visits and meetings from March 28 to May 4, 2011, with NAVFAC ESC and SCAN officials at Port Hueneme, California, and officials at three FEADs in the San Diego area—Point Loma, San Diego, and Coronado. During the months of June, July, and October 2011 and January 2012, we communicated with a NAVFAC SW official regarding the period of performance at each site and during each conversation, the contractors were always behind schedule, with the exception of two FEADs.

Regardless of the approach used to execute the AMI project, the contractor missed milestones. In January 2012, we requested a final status update of each site and a NAVFAC SW official provided a Data Call Worksheet dated November 2011. The Data Call Worksheet identified two FEADs that were 100 percent completed, four that were zero percent completed, three that were less than 70 percent completed, and one that was less than 94 percent completed. Using that information, we concluded that there is a risk that seven of the nine task orders will miss the EPACT 2005 mandate requiring the installation of advanced meters by October 1, 2012. Therefore, we are requesting the Commanding Officer, NAVFAC SW, to reconsider the recommendation, and provide additional comments by October 10, 2012.

Finding C. Quality Reviews of Reported Data Were Not Adequate

NAVFAC SW officials did not adequately verify data reported for the AMI Project. Specifically, NAVFAC SW officials:

- accepted information that the contractor submitted to www.FederalReporting.gov without adequate review. This occurred because NAVFAC SW did not have adequate procedures to detect and correct reporting errors during data quality reviews and verify the reasonableness of the estimated number of jobs reported by the contractor.
- did not enter Contract Action Reports (CARs) for five of the nine task orders in the Federal Procurement Data System (FPDS). This occurred because NAVFAC SW officials did not have procedures in place to verify that contract actions they entered into the Standard Procurement System properly transferred to FPDS.

As a result, NAVFAC SW officials did not ensure the contractor adequately informed the public of Recovery Act funds spent, services performed, and the employment impact of the AMI project.

Recovery Act Reporting Requirements

Section 1512 of the Recovery Act requires recipients¹⁰ (contractors) to report on the use of Recovery Act funds. Recipients of awards under section 1512 of the Act must report on a quarterly basis on the first day following the end of the quarter. Federal agencies are required to review the quality of data submitted by the contractor in response to the reporting requirements. See Appendix D for a detailed discussion of the Recovery Act reporting guidance.

Reviews of the Contractor's Reports Need Improvement

NAVFAC SW officials did not adequately verify the data reported by the contractor on www.FederalReporting.gov. Table 5 (page 27) lists the seven reporting periods in which the contractor submitted reports.

¹⁰Prime recipients are non-federal entities that receive Recovery Act funding through Federal awards. The terms “prime recipient” and “recipient” are interchangeable. For Federal contracts subject to reporting under FAR clause 52.204-11, these terms translate to “federal contractor” (for example, prime contractor).

Table 5. Recovery Act Contractor Reporting Calendar Timeline

Quarter (Q), Calendar Year (CY)	Time Period Covered (Reporting Quarters/Periods)	Start of Reporting Cycle
Q-3, CY 2009	February 17, 2009 – September 30, 2009	October 1, 2009
Q-4, CY 2009	October 1, 2009 – December 31, 2009	January 1, 2010
Q-1, CY 2010	January 1, 2010 – March 31, 2010	April 1, 2010
Q-2, CY 2010	April 1, 2010 – June 30, 2010	July 1, 2010
Q-3, CY 2010	July 1, 2010 – September 30, 2010	October 1, 2010
Q-4, CY 2010	October 1, 2010 – December 31, 2010	January 1, 2011
Q-1, CY 2011	January 1, 2011 – March 31, 2011	April 1, 2011

For the reporting period September 30, 2009, to March 31, 2011, the contractor submitted approximately 59 reports¹¹ (available at www.Recovery.gov) containing data reported on www.FederalReporting.gov in accordance with section 1512 of the Recovery Act. The contractor reported \$5.2 million of Recovery Act funds in the wrong quarter, and NAVFAC SW officials did not validate the cumulative total of 6.3 jobs reported for seven quarters.

Amount Invoiced Was Reported in the Incorrect Quarter

NAVFAC SW officials did not adequately review data the contractor submitted to www.FederalReporting.gov. Specifically, NAVFAC SW officials did not ensure the contractor reported \$5.2 million of Recovery Act funds in the appropriate reporting quarter. The contractor submitted invoices for eight task orders. Of those eight task orders, NAVFAC SW officials received invoices for six task orders (task orders 6, 7, 8, 11, 14, and 15), valued at \$4,862,744, in the third quarter of calendar year (CY) 2010; however, the contractor incorrectly reported these in the second quarter. Also, the contractor submitted, and NAVFAC SW officials received, the invoice for task order 10, valued at \$356,837, in the fourth quarter of CY 2010, but the contractor incorrectly reported the invoice amount in the second quarter of CY 2010. The contractor correctly submitted and reported task order 12, valued at \$332,500. Table 6 (page 28) shows invoices the contractor submitted, which NAVFAC SW officials received and processed.

¹¹The prime recipient for the AMI Recovery Act project submitted quarterly reports for nine task orders awarded under this project.

Table 6. Amount Invoiced by the Contractor Not Correctly Reported

Task Order	Invoiced Amount	Contractor Invoice Submission Date	Invoice Received Date	Payment Processing Date	Quarter Contractor Reported Invoice	Correct Reporting Quarter
6	\$1,787,950	Aug 19, 2010	Aug 19, 2010	Aug 23, 2010	Q2, CY2010	Q3, CY2010
7	518,521	Sep 23, 2010	Sep 23, 2010	Sep 23, 2010	Q2, CY2010	Q3, CY2010
8	703,071	Aug 20, 2010	Aug 8, 2010	Sep 14, 2010	Q2, CY2010	Q3, CY2010
10	356,837	Nov 1, 2010	Nov 1, 2010	Nov 4, 2010	Q2, CY2010	Q4, CY2010
11	1,148,156	Sep 8, 2010	Sep 8, 2010	Sep 21, 2010	Q2, CY2010	Q3, CY2010
12	332,500	Jun 3, 2010	Jun 3, 2010	Jun 3, 2010	Q2, CY2010	Q2, CY2010
14	591,430	Jul 16, 2010	Jul 16, 2010	Jul 20, 2010	Q2, CY2010	Q3, CY2010
15	113,616	Jul 16, 2010	Jul 16, 2010	No date	Q2, CY2010	Q3, CY2010
*16	0					
Total Invoiced	\$5,552,081					

*Task order 16 indicates no invoice submitted.

Data Quality Reviews Did Not Identify Reporting Errors

NAVFAC SW officials did not include procedures in their data quality review process for validating contractor reported data. Specifically, NAVFAC SW officials did not have adequate procedures to detect and correct reporting errors during their data quality review for the amount invoiced by the contractor. According to NAVFAC SW internal guidance, the review process consisted of verifying whether the contractor submitted their quarterly reports on time, validating reported data for accuracy and errors, and certifying the report in www.FederalReporting.gov.

The review process requires NAVFAC SW to validate the invoiced amount reported in contractor reports by comparing it to the invoiced data available in the Federal Government invoicing system (Wide Area Work Flow). A NAVFAC SW official stated, however, that the review only focused on the dollar amount reported. Also, he did not validate whether the contractor reported the invoices in the correct quarter. Further, he acknowledged this was the first time they identified this reporting error. Based on our discussions, the NAVFAC SW official agreed to update the data quality review process to ensure the contractor reports the invoiced amounts in the correct quarter. NAVFAC SW officials should also notify the contractor to correct the \$5.2 million of invoices incorrectly reported.

Reasonableness of Reported Jobs Was Not Validated

NAVFAC SW officials did not validate the accuracy of key data elements, such as the reasonableness of jobs reported by the contractor. The Director, Defense Procurement and Acquisition Policy, issued a memorandum “Guidance on Reviewing Contractor Reports Required by the American Recovery and Reinvestment Act of 2009,” on December 16, 2009, requiring DoD contracting officers to verify the accuracy of key data elements, such as the reasonableness of the total number of jobs reported.

NAVFAC SW officials did not validate the accuracy of key data elements, such as the reasonableness of jobs reported by the contractor.

At the end of the March 31, 2011, reporting period, the contractor reported a cumulative total of about 6.3 full-time equivalents (FTE)¹² jobs funded during the project design phase. We determined that all nine task orders reported FTE jobs during the design phase. However, NAVFAC SW personnel did not validate the FTE jobs reported in contractor quarterly reporting. NAVFAC SW officials also did not perform any additional steps to obtain the contractor’s justification for job estimates reported during the project design phase or request for existing evidence that can validate their estimates. See Table 7 for the number of FTEs reported for each task order.

**Table 7. Cumulative
Number of FTE Jobs Reported**

Task Order	Average FTE Jobs Reported during Design Phase*
6	1.57
7	0.65
8	0.92
10	0.29
11	1.38
12	0.40
14	0.45
15	0.30
16	0.30
Cumulative Total of Jobs Reported	6.26

*The number of FTE jobs reported during the design phase is based on an average number of FTEs for seven reporting periods. Only task order 8 represents the average number of FTEs reported by the contractor for quarters ending September 30, 2009, to December 31, 2010.

¹²The estimated numbers of jobs funded by the Recovery Act is expressed as “full-time equivalents” (FTE). The FTE formula for calculating the estimated “number of jobs” consists of dividing the total number of hours worked in the reported quarter by the number of hours in a full-time schedule for the quarter.

Procedures for Verifying Jobs Reported Were Ineffective

NAVFAC SW officials did not include effective procedures for verifying the reasonableness of the estimated number of jobs reported by the contractor although a data quality review process was established. According to a NAVFAC official, he took the number of jobs reported by the contractor on the “honor system” because the project was in the design phase.

A NAVFAC SW official provided a “Jobs Calculation” worksheet to all Recovery Act contractors to calculate the number of FTE jobs funded on a quarterly basis. As part of the data quality review process, if the contractor reports an unusual number of jobs, NAVFAC SW officials verify that number by requesting the field office to provide the labor hours reported in the Daily Production Report. The daily reports contain the total number of labor hours worked by employees each day at the project worksite. Once NAVFAC SW officials receive the total number of labor hours worked for the most recent quarter (the quarter being reported), they use the formula¹³ for calculating a FTE to verify the contractor quarterly reporting of jobs.

NAVFAC SW officials requested the labor hours reported in the daily reports only when the contractor performed work at the project worksite. The labor hours worked each day at the home office, such as performing design work, were not reported by the contractor or monitored by Government officials like the hours worked at a project work site. Accordingly, NAVFAC SW officials trusted the number of jobs reported by the contractor unless the contractor reports 0 FTEs during the course of the project. When that occurs, NAVFAC SW officials request additional justification. NAVFAC SW officials should implement procedures to validate the number of jobs reported during the design phase and obtain evidence for the contractor estimates.

Recovery Act Contract Actions Not Reported in FPDS

NAVFAC SW officials did not enter CARs for five of the nine task orders in FPDS. A March 19, 2010, Director, Defense Procurement and Acquisition Policy memorandum, “Revised Posting and Reporting Requirements for the American Recovery and Reinvestment Act of 2009 (Recovery Act)” states, “agencies shall follow existing FAR part 4 requirements for reporting contract actions to FPDS.” Accordingly, each DoD contract action using Recovery Act funds is reported individually to FPDS upon award. This includes any contract modification or order under a task or delivery order contract funded using Recovery Act funds. Table 8 (page 31) shows 32 modifications issued for the AMI task orders. Nine of the 32 modifications increased the cost of AMI contract by \$4.3 million as shown in Table 8 on page 31.

¹³NAVFAC SW officials stated that a standard full-time schedule of a 40-hour work week (2,080 hours/4 hours=520 hours for each quarter) is used to perform the FTE calculation.

Table 8. Contract Modifications

Task Order	Total Number of Modifications	Total Number of Modifications Increase Contract	Contract Award Amount	Total Modification Amount	Total Contract Amount
6	5	1	\$6,597,901	\$1,173,876	\$7,771,777
7	2	1	1,965,010	398,569	2,363,579
8	3	1	2,609,487	585,054	3,194,541
10	4	1	1,321,110	308,198	1,629,308
11	4	1	4,221,767	959,845	5,181,612
12	5	1	1,217,843	249,854	1,467,697
14	4	1	2,246,322	402,087	2,648,409
15	3	2	443,182	229,241	672,423
16*	2	0	1,673,047	0	1,673,047
Totals	32	9	\$22,295,669	\$4,306,724	\$26,602,393

* Modification did not increase contract value.

The contracting officer issued nine contract modifications, increasing the cost of the AMI contract in December 2009. According to www.FPDS.gov and available documentation of the contract modifications, NAVFAC SW officials did not develop CARs for five of the nine modifications, representing five of nine task orders (task order 6, 7, 8, 10, and 15), totaling \$2.7 million. Therefore, NAVFAC SW officials did not comply with DoD policy for reporting contract actions to FPDS. As a result, FPDS users will not have accurate and timely federal procurement data available for planning and awarding contracts.

NAVFAC SW Unaware Contract Actions Not Listed in FPDS

NAVFAC SW officials did not have procedures in place to verify that contract actions entered into the Standard Procurement System were transferred to FPDS. According to NAVFAC SW officials, they developed CARs to report the contract modifications, but did not notice the CARs were not available in FPDS. NAVFAC SW officials stated that contracting personnel used an external system to enter DoD contract actions. The external system, which feeds into www.FPDS.gov contained a system “glitch” in December 2009. As a result, NAVFAC SW officials did not process the CARs in the external system, which resulted in the contract actions not reported in www.FPDS.gov. NAVFAC SW officials should have ensured that the contract actions were updated into the Standard Procurement System and transferred to FPDS upon award. To prevent this from reoccurring, NAVFAC SW officials should establish procedures to monitor and ensure all contract actions are reported. However, after informing NAVFAC SW officials of the contract actions, personnel at Naval Base Coronado took action to update the FPDS system for task order 6.

Conclusion

NAVFAC SW data quality reviews did not identify reporting errors and did not notify the contractor that \$5.2 million of Recovery Act funds spent on the AMI project were reported in the incorrect quarter. Also, NAVFAC SW officials did not have procedures in their data quality review process for validating the reported number of jobs funded during the design phase for the AMI project.

Recommendations, Management Comments, and Our Response

C. We recommend the Commanding Officer, Naval Facilities Engineering Command Southwest to:

1. Require the Advanced Metering Infrastructure contractor to correct the \$5.2 million of invoices reported incorrectly in the second quarter of calendar year 2010.

NAVFAC SW Comments

The Commander, NAVFAC, responding on behalf of the Commanding Officer, NAVFAC SW, agreed with the recommendation, stating there were reporting errors prior to implementing a centralized review process. Since the IG's visit, he noted that NAVFAC SW put controls in place to validate and ensure invoices are reported in the correct period. The Commander also stated that NAVFAC SW would direct American Systems Corporation to correct its previous reports in accordance with the www.federalreporting.gov process whereby recipients (contractors) can request changes to prior quarter data. American Systems Corporation has until August 1, 2012, to make the corrections.

Our Response

Comments from the Commander, NAVFAC, were responsive, and no further comments are required.

2. Revise the data quality review process to include procedures that ensure invoices submitted by the contractor are reported in the correct quarter.

NAVFAC SW Comments

The Commander, NAVFAC, responding on behalf of the Commanding Officer, NAVFAC SW, agreed with the recommendation, stating that a data quality review process is in place to verify whether invoice amount are reported in the correct quarter. He recommended closure of this action item.

Our Response

Comments from the Commander, NAVFAC, were responsive, and no further comments are required.

3. Develop and implement procedures for data quality review process to perform logic or spot checks on the contractor's justification of the number of jobs reported during the design phase.

NAVFAC SW Comments

The Commander, NAVFAC, responding on behalf of the Commanding Officer, NAVFAC SW, agreed with the recommendation, stating that NAVFAC SW implemented a centralized procedure for data quality reviews. He stated that the focal point obtains quarterly reports from daily records showing the hours worked and compares that report with the total hours reported for that quarter. The Commander added that the administering contracting officer is required to verify and reconcile any discrepancies. He recommended closure of this action item.

Our Response

Comments from the Commander, NAVFAC, were responsive, and no further comments are required.

4. Update the Standard Procurement System to ensure contract actions are transferred to the Federal Procurement Data System for the awarded Advanced Metering Infrastructure task orders.

NAVFAC SW Comments

The Commander, NAVFAC, responding on behalf of the Commanding Officer, NAVFAC SW, agreed with the recommendation and stated that the Standard Procurement System has mechanisms in place to ensure contract action reports are transferred to the Federal Procurement Data System. He added that a system glitch prevented the CARs from being reported and has been addressed. To ensure contract actions are reported and any missing CARs are corrected, the Commander stated that the Electronic Application (eApps) team implemented a process to pull a "Missing CAR" report from the Standard Procurement System on a bimonthly basis. The Commander also stated that the contract specialists are instructed to contact the eApps team regarding problems finalizing a CAR when releasing an award. The eApps team is conducting a thorough review of the modifications identified by DoD OIG to ensure all actions are accounted for and reported, and NAVFAC SW ensure corrections are completed by June 2012.

Our Response

Comments from the Commander, NAVFAC, were responsive, and no further comments are required.

5. Develop procedures to monitor contract actions entered into the Standard Procurement System, which transfers those actions to Federal Procurement Data System.

NAVFAC SW Comments

The Commander, NAVFAC, responding on behalf of the Commanding Officer, NAVFAC SW, agreed with the recommendation, stating that a process was implemented for the eApps team to monitor contract actions by pulling “Missing CAR” report from the Standard Procurement System on a bimonthly basis, and any missing CARs are corrected. The Commander also stated that the contract specialists are instructed to contact the eApps team regarding problems finalizing a CAR when releasing an award. He recommended closure of this action item.

Our Response

Comments from the Commander, NAVFAC, were responsive, and no further comments are required.

Appendix A. Scope and Methodology

We conducted this performance audit from March 2011 through March 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We selected one Recovery Act Facilities, Sustainment, Restoration, and Modernization project at Port Hueneme, California for review. The AMI project throughout Navy Region Southwest California was valued at \$24.8 million. We expanded the scope of this audit to include planning for the AMI project.

To evaluate the effectiveness of NAVFAC SW controls over the contractor's planning, performance, and reporting of the AMI project, we interviewed personnel at NAVFAC Headquarters in Washington, D.C.; SCAN and NAVFAC ESC at Port Hueneme, California; and NAVFAC SW in San Diego, California. We conducted site visits at Naval Base Coronado (task order 6), Naval Base San Diego (task order 7), and Naval Base Point Loma (task order 8) in San Diego, California. During our site visit, we evaluated NAVFAC SW officials' oversight over planning, contractor's performance and reporting.

Planning. We reviewed official contract files and documentation including economic analysis, cost estimate, and DD Form 1391.

Recipient Reporting. We reviewed selected reports filed by the contractor on www.federalreporting.gov. We verified contractor reporting elements contained on www.recovery.gov for the third and fourth quarters of CY 2009, four quarters of CY 2010, and the first quarter of CY 2011, and compared the information with contract files and the FPDS. We also determined whether contractor officials were taking corrective action against contractors who did not comply with FAR reporting requirements

Project Execution. We determined whether the QA surveillance plans for the project specified work requiring surveillance and the method of surveillance. We also reviewed daily quality control reports from the contractor, project milestone schedules, contractor submitted invoices, and inspection reports.

Small Business Oversight. We verified and determined that the contractor did not meet the small business cost and size standards because the contractor is not qualified as a small business. Therefore, the small business evaluation is not applicable to this audit.

Use of Computer-Processed Data

We relied on computer-processed data from the Federal Procurement Data System-Next Generation, and used project data posted on the Recovery Act Web site

(www.FederalReporting.gov). The Federal Procurement Data System–Next Generation is a dynamic, real-time database in which contracting officers can update data to include new actions, modifications, and corrections. The Recovery Accountability and Transparency Board established the Web site, www.FederalReporting.gov, as a nationwide data collection system for contractors’ to report data required by the Recovery Act. We compared data generated by each system with the DoD expenditure plans, funding authorization documents, and contracting documentation to support the audit conclusions. We determined that the data were sufficiently reliable for the purpose of our audit.

Use of Technical Assistance

We did not use classical statistical sampling techniques that would permit generalizing results to the total population because there were too many potential variables with unknown parameters at the beginning of this analysis. The predictive analytic techniques employed provided a basis for logical coverage not only of Recovery Act funding being expended, but also of types of projects and types of locations of public works projects managed by U.S. Army Corps of Engineers.

Prior Coverage

The Government Accountability Office (GAO), the DoD Inspector General (DoD IG), and the Military Departments have issued reports and memoranda discussing DoD projects funded by the Recovery Act. You can access unrestricted reports at <http://www.recovery.gov/accountability>.

Further, GAO and the DoD IG have issued three reports specifically discussing Recovery Act issues pertaining to this report. Unrestricted GAO reports can be accessed at <http://www.gao.gov>. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil/audit/reports>.

GAO

GAO Report No. GAO-10-581, “Increasing the Public’s Understanding of What Funds Are Being Spent on and What Outcomes Are Expected,” May 27, 2010

DoD IG

DoD IG Report No. D-2011-055, “American Recovery and Reinvestment Act – U.S. Army Corps of Engineers’ Data Quality Review Processes of Civil Works Funding for the Period Ending December 31, 2009, Were Not Effective,” March 25, 2011

DoD IG Report No. D-2011-052, “American Recovery and Reinvestment Act–DoD Data Quality Review Processes for the Period Ending December 31, 2009, Were Not Fully Implemented,” March 23, 2011

Appendix B. Recovery Act Criteria and Guidance

The following list includes the primary Recovery Act criteria and guidance (notes appear at the end of the list):

- U.S. House of Representatives Conference Committee Report 111–16, “Making Supplemental Appropriations for Job Preservation and Creation, Infrastructure Investment, Energy Efficiency and Science, Assistance to the Unemployed, and State and Local Fiscal Stabilization, for the Fiscal Year Ending September 30, 2009, and for Other Purposes,” February 12, 2009
- Public Law 111-5, “American Recovery and Reinvestment Act of 2009,” February 17, 2009
- OMB Memorandum M-09-10, “Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009,” February 18, 2009
- OMB Bulletin No. 09-02, “Budget Execution of the American Recovery and Reinvestment Act of 2009 Appropriations,” February 25, 2009
- White House Memorandum, “Government Contracting,” March 4, 2009
- White House Memorandum, “Ensuring Responsible Spending of Recovery Act Funds,” March 20, 2009
- OMB Memorandum M-09-15, “Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009,” April 3, 2009¹
- OMB Memorandum M-09-16, “Interim Guidance Regarding Communications With Registered Lobbyists About Recovery Act Funds,” April 7, 2009
- OMB Memorandum M-09-19, “Guidance on Data Submission under the Federal Funding Accountability and Transparency Act (FFATA),” June 1, 2009
- OMB Memorandum M-09-21, “Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009,” June 22, 2009²
- OMB Memorandum M-09-24, “Updated Guidance Regarding Communications with Registered Lobbyists About Recovery Act Funds,” July 24, 2009
- OMB Memorandum M-09-30, “Improving Recovery Act Recipient Reporting,” September 11, 2009

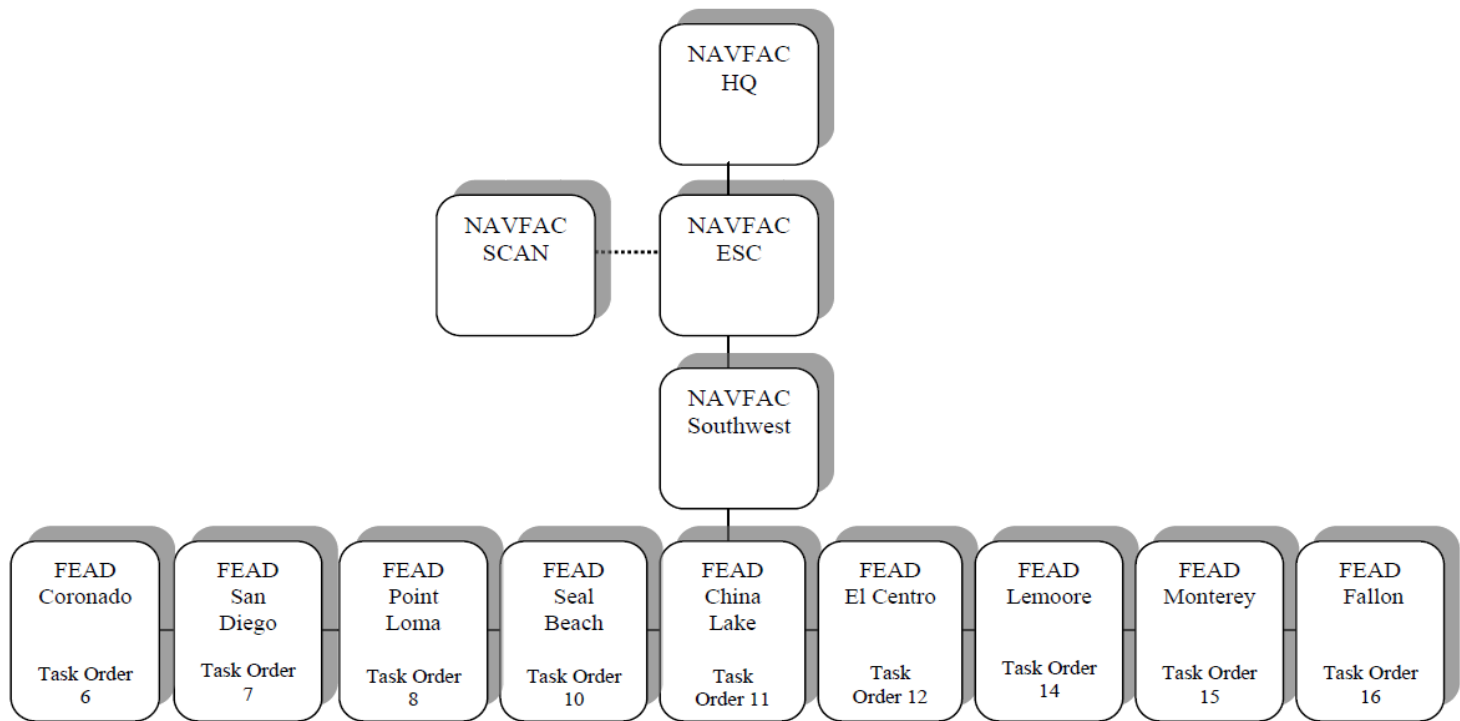
- OMB Office of Federal Procurement Policy, “Interim Guidance on Reviewing Contractor Reports on the Use of Recovery Act Funds in Accordance with FAR Clause 52.204-11,” September 30, 2009
- OMB Memorandum M-10-08, “Updated Guidance on the American Recovery and Reinvestment Act- Data Quality, Non–Reporting Recipients, Reporting of Job Estimates,” December 18, 2009
- OMB Memorandum M-10-14, “Updated Guidance on the American Recovery and Reinvestment Act,” March 22, 2010
- Presidential Memorandum “Combating Noncompliance with Recovery Act Reporting Requirements,” April 6, 2010
- OMB Memorandum M-10-17, “Holding Recipients Accountable for Reporting Compliance under the American Recovery and Reinvestment Act,” May 4, 2010
- OMB Memorandum M-10-34, “Updated Guidance on the American Recovery and Reinvestment Act,” September 24, 2010²
- Federal Acquisition Regulation, subpart 4.6, “Contract Reporting,” March 2005
- NAVFAC P-442, “Economic Analysis Handbook,” October 1993
- Office of the Chief of Naval Operations Naval Instructions 11010.20G, “Facilities Projects Instruction,” October 14, 2005

Notes

¹ Document provides Government-wide guidance for carrying out programs and activities enacted in the American Recovery and Reinvestment Act of 2009. The guidance states that the President’s commitment is to ensure that public funds are expended responsibly and in a transparent manner to further job creation, economic recovery, and other purposes of the Recovery Act.

² Document provides Government-wide guidance for carrying out the reporting requirements included in Section 1512 of the Recovery Act. The reports will be submitted by contractors beginning in October 2009 and will contain detailed information on the projects and activities funded by the Recovery Act.

Appendix C. AMI Organizational Structure



NAVFAC Headquarters. The program manager is located at NAVFAC Headquarters, which is an Echelon II Command. NAVFAC headquarters has the responsibility for program management and creating policy and guidance.

SCAN. SCAN is responsible for awarding the contract and delegating responsibility for tracking and reporting. Additionally, they are responsible for appointing the contracting officer representative as well as assigning administrative contracting officer at each FEAD.

NAVFAC ESC. The project manager is located at NAVFAC ESC, which is an Echelon III command. ESC provides NAVFAC commands with specialized expertise for energy projects as requested by the NAVFAC Energy Office. The NAVFAC ESC project manager is responsible for managing the AMI contract and delivery orders to provide technical direction and discussion as necessary with respect to the specifications or statement of work, and monitoring the performance of work under the contract. The ESC project manager is also responsible for bringing to the attention of the contracting officer any significant deficiencies in the contractor's performance or other actions, which could jeopardize the contract's performance.

NAVFAC SW. NAVFAC SW is responsible for integrating planning, programming and execution of facilities engineering to supported commands. NAVFAC SW officials prepared the DD Form 1391 planning document to secure funding for the AMI project. NAVFAC SW is also responsible for providing oversight for the overall execution of the AMI project, conducting data quality reviews for contractors' reported data, and verifying that contract actions they entered into the Standard Procurement System properly transferred to FPDS.

NAVFAC SW FEAD. FEADs are responsible for the execution of the project, to include the quality assurance oversight. Each FEAD has an appointed administrative contracting officer to perform contract administration functions and duties.

Appendix D. Recovery Act Reporting

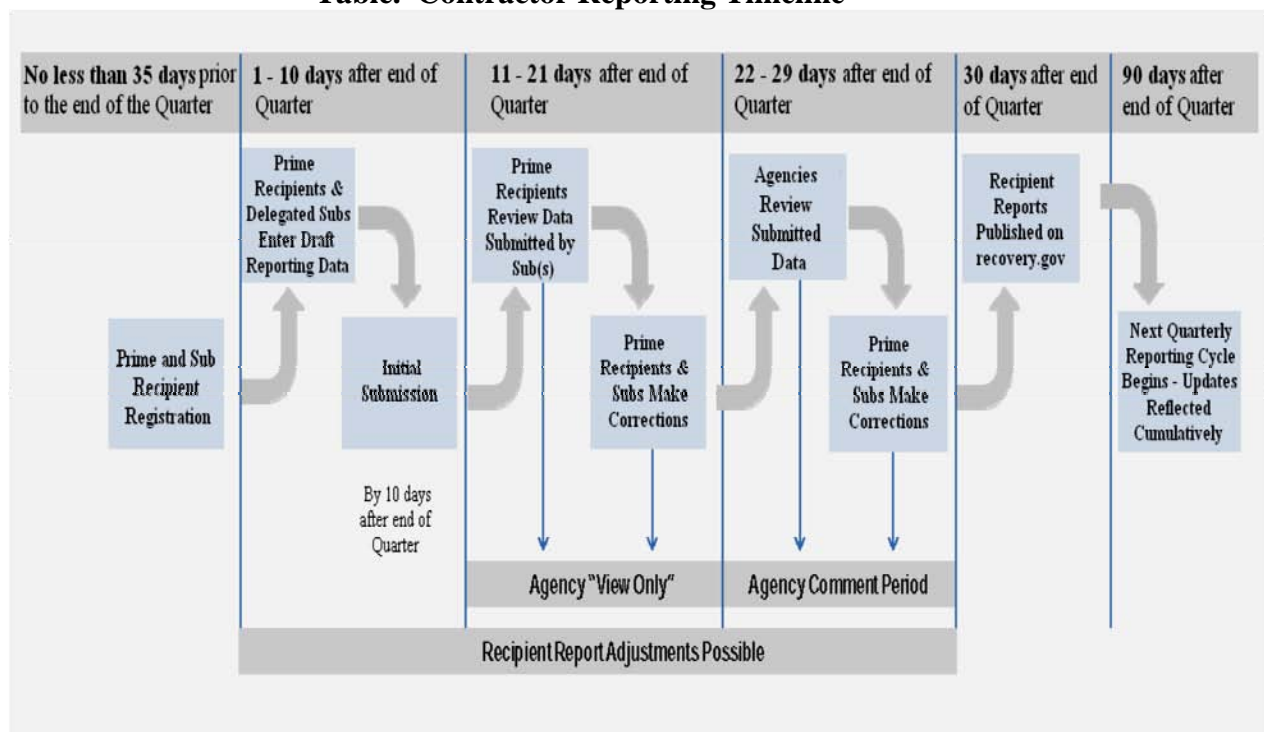
The Recovery Act defines a contractor as any entity receiving Recovery Act funds directly from the Federal Government through contracts, grants, or loans. Prime contractors of recovery funds are required, within 10 days after the end of each calendar quarter, to report:

- the total amount of funds received, expended, or obligated;
- a description of projects or activities; and
- estimated number of jobs created or retained.

The RATB established a nationwide data collection system at www.federalreporting.gov for contractors to report information required by the Recovery Act. Also, the RATB established a Web site to make reported information available for the public not later than 30 days after the end of each quarter on www.recovery.gov.

OMB Memorandum M-09-21, “Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009,” June 22, 2009, provides information on key activities and timelines for contractor submitting quarterly reports and Federal agencies reviewing the data in the reports. The memorandum requires contractors of Recovery Act funds and reviewing Federal agencies to register at www.FederalReporting.gov before submitting or reviewing contractor reports. The Federal agencies should complete the reporting and review period within 30 days. The following table depicts the contractor reporting time and key reporting activities.

Table. Contractor Reporting Timeline



Source: OMB M-09-21.

The OMB guidance requires Federal agencies to develop internal policies and procedures for reviewing reported data and to perform a limited data quality review (for example, accuracy, completeness, and timely reporting of information) to identify material omissions or significant reporting errors and to notify the contractor of the need to make appropriate and timely changes. Material omissions are defined as instances where the recipient does not report the required data or reported information is not responsive to the data requests, resulting in significant risk that the public is not fully informed about the status of a Recovery Act project or activity. Significant reporting errors are defined as those instances where the recipient does not report data accurately and such erroneous reporting results in significant risk that the public would be misled or confused by the recipient report.

Department of the Navy Comments

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DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING COMMAND
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WASHINGTON NAVY YARD DC 20374-5065

7510
Ser 09IG/016
25 May 12

From: Commander, Naval Facilities Engineering Command
To: DOD Inspector General

Subj: RESPONSE TO DODIG DRAFT AUDIT REPORT PROJECT NO. D2011-D000LH-0160.000, AMERICAN RECOVERY AND REINVESTMENT ACT, IMPLEMENTATION OF THE ADVANCED METERING INFRASTRUCTURE REQUIREMENTS FOR PLANNING, CONTRACTOR'S PERFORMANCE, AND REPORTING WAS INEFFECTIVE

Ref: (a) DOD Inspector General (IG) draft report on Project No. D2011-D000LH-0160.000 of 8 May 12

Encl: (1) NAVFAC SW Response to DOD IG Draft Audit Report Project No. D2011 D000LH-0160.000

1. Enclosure (1) is provided in response to reference (a).
2. The NAVFAC point of contact is [REDACTED] Chief Command Evaluator, at [REDACTED] or [REDACTED]


THOMAS J. DICK-PEDDIE
Chief Command Evaluator

Copy to:
NAVFAC LANT
NAVFAC SW

NAVFAC SOUTHWEST RESPONSE TO DODIG DRAFT AUDIT REPORT PROJECT NO. D2011-D000LH-0160.000, AMERICAN RECOVERY AND REINVESTMENT ACT -IMPLEMENTATION OF THE ADVANCED METERING INFRASTRUCTURE REQUIREMENTS FOR PLANNING, CONTRACTOR'S PERFORMANCE, AND REPORTING WAS INEFFECTIVE, DATED 8 MAY 2012

Recommendation A: We recommend the Commanding Officer, Naval Facilities Engineering Command Southwest, issue guidance clearly defining the roles and responsibilities to comply with the requirements of Public Law 109-58, "Energy Policy Act of 2005," August 8, 2005.

NAVFAC Southwest Management Response: *Non-concur.*

This recommendation is based on the IG finding that "Navy officials nor NAVFAC personnel submitted an implementation plan to the Secretary of Energy" while the IG notes that NAVFAC did meet the other requirements of EPACT 2005. However, NAVFAC Southwest (SW) did not issue the contract nor had the responsibility of submitting the implementation plan. Therefore, it is outside the roles and responsibilities of the Commanding Officer, NAVFAC SW, to issue this guidance.

The clear direction for Energy related projects was conveyed by the Office of the Secretary of Defense and the Secretary of the Navy. The AMI projects and all their shortcomings were discussed with Mr. McCord, PDUSD(C) and Mr. McAndrew, Dir Facility Invest & Mgmt (ODUSD(I&E)), during the vetting process. The report downplays the very short timeline that NAVFAC was given to develop a priority list and get it through the approval process; which it cleared all the way through the Office of Management and Budget (OMB) and the Office of the Vice President (VP).

Recommendation B.1: Require the six Facilities Engineering Acquisition Divisions to review their Quality Assurance plans to ensure they were prepared in accordance with the Naval Facilities Engineering Command Business Management System.

NAVFAC Southwest Management Response: *Non-concur.*

Note: Table 2 of the Draft Report (page 10) notes that many of the FEADs do not have developed QA Plans. Since the visit of the IG team in April/May 2011, this QA documentation has been done for all sites and has been provided to the IG in under separate email (all provided to the IG team by February 2012).

NAVFACSW believes checks and balances are in place and demonstrate an adequate and sufficient QA Plan:

1. All locations were recommended by the NAVFACSW officials to utilize the most current template from the NAVFAC SW BMS. It is correct that the QA Plan was shared by one NAVFACSW Official. This is consistent with utilizing lessons learned across the AO. Each location is still held accountable for the execution, oversight and implementation of the work.

Comment [sims1]: Further to this commentary, it is noteworthy that I pointed out during the teleconf with DODIG staff that NAVFAC had, prior to the DODIG inspection, self-identified program and project management shortfalls and had taken corrective action. I recommended that DODIG acknowledge this in its report. As noted here, NAVFAC has already addressed this issue.

Redirected to
Commander, NAVFAC

Renumbered as
Recommendation
B.2.a

Enclosure (1)

2. All locations have personnel that are knowledgeable and competent of implementing the QA Plan. In addition the NAVFAC SWV specialized meter personnel are being utilized by each location as a pivot point in consultation.
3. The QA-Plan will be utilized until the contract is complete.
4. Lessons learned from location-to-location has also enabled the government to fine-tune the QA Plans. These adjustments have been shared with all locations that still have meters to be installed.

Recommendation B.2: Appoint a project and design manager at each Facilities Engineering Acquisition Division site to provide effective oversight over the design and installation of advanced meters.

NAVFAC Southwest Management Response: *Non-Concur.*

A project manager was appointed to each contract task order to provide oversight for the design and installation of the meters from the start of the project (the project manager at each FEAD is the Construction Manager). The NAVFAC SW team has executed each site specific task order project at the associated NAVFAC SW Public Works Department (PWD). The PWD team is comprised of a Construction Manager, Administrative Contract Specialist and Technical Subject Matter expert. The PWD is executing the projects consistent with NAVFAC execution processes. In addition, NAVFAC SW has established a OPS oversight team consisting of the NAVFAC SW Deputy Operations Officer, Public Works Business Line ICS technical expert, PWD Point Loma Supervisory Engineer and China Lake Contract Officer. This team is assuring execution consistency across NAVFAC SW AOR and coordinating key across command AMI issues and problems with NAVFAC HQ, NFESC and SCAN. The AMI program and execution team has been working together throughout the AMI process to meet the aggressive execution goals of OSD and ASN.

Comment [sims2]: Similar to my above comment: As noted here, NAVFAC SW does/did have PMs assigned. Even so, NAVFAC took additional action of to establish the OPS oversight team as described. Not sure why DODIG failed to acknowledge this.

Recommendation B.3: Review the performance of the project manager responsible for overseeing the contractor performance and the missed milestones. Based on the results, consider any corrective actions, as appropriate.

NAVFAC Southwest Management Response: *Non-concur.*

The discussion on missed milestones is based on an incorrect statement that this was a regional contract. The original award consisted of nine (9) stand alone contracts (each individual task order is a stand alone contract). This factual inconsistency in the report appears to result in incorrect conclusions regarding missed milestones by the contractor. This is further highlighted by the statement on page 12 of the report that "NAVFAC SW officials renegotiated an agreement with the contractor to operate under a task order

Comment [sims3]: Alternatively, the response could be that the NAVFAC SW CO, based on DODIG recommendation, has determined that no misconduct occurred and that no performance-related corrective action is required regarding the project managers (or similar statement) and call this action complete. The response could still note the reference errors in the draft report.

Renumbered as
Recommendation
B.2.b

Renumbered as
Recommendation
B.2.c

approach for each site because the contractor continued to miss milestones under the regional approach". There was no such NAVFAC SW "renegotiated agreement".

The missed milestones have been concurrent delays and documented as such by contracting officials. The further conclusions regarding missed milestones (page 13) were made solely on looking at original contract completion dates and not based on any interaction with the personnel in the field mentioned in the report. Additionally, examples of these documented concurrent delays (as well as copies of official letters of concern from the ACO to the contractor) were provided to the IG via email and discussed on a phone call with the IG team on 16FEB12.

Recommendation B.4: Review the performance of the official responsible for not including the liquidated damages clause. Based on the results, consider any corrective actions, as appropriate.

NAVFAC Southwest Management Response: *Non-concur.*

NAVFAC SW did not award the original task orders on this contract. Official response to this item falls under the purview of SCAN.

NAVFAC SW recommended possible response:

Disagree with the conclusion that the liquidated damages (LDs) clause was improperly excluded from SW AMI task orders and its exclusion caused the Government to forego over \$200K in potential collection of damages. LDs are not punitive. LDs are used to compensate the Government for probable damages. Therefore, the liquidated damages rate must be a reasonable forecast of just compensation for the harm that is caused by late delivery or untimely performance of the particular contract action. In the case of the meter installations, the Contracting Officer was unable to forecast harm associated with late delivery.

The estimates of liquidated damages cited in the report by the IG are neither accurate nor supportable based upon the facts of this case. Specifically, the audit states that "the absence of the liquidated damages clause may prevent NAVFAC SW officials from recovering about \$266,750 to \$839,729 for 1,067 days of delinquent delivery." This is factually incorrect. Even if the clause had been in the orders, to collect damages the contractor would have had to have been shown to be 100% at fault. To date, there have been no delays in the performance that have been shown to be the sole responsibility of the contractor, without concurrent delay on the part of the Government. In fact, the time extensions issued by the field team would not have been issued had there been sole contractor delay. Furthermore, the mere exclusion of the clause does not negate the Government's ability to collect damages. If the Government suffers actual damages due to the contractor's late completion, the Government can seek damages from the contractor through an affirmative claim.

Redirected to
Commander, NAVFAC
and Renumbered as
Recommendation B.1.

Recommendation C.1: Require the Advanced Metering Infrastructure contractor to correct the \$5.2 million of invoices reported incorrectly in the second quarter of calendar year 2010.

NAVFAC Southwest Management Response: *Concur.*

Prior to implementing a centralized review process there were errors with the reporting. It should be noted since the IG's visit NAVFACSW has put controls in place to validate and ensure invoices are reported in the correct period. NAVFACSW will direct ASI to correct its previous reports in accordance with the www.federalreporting.gov process whereby recipients (contractors) can request changes to prior quarter data via the ADC (Automated Change Data Tool). ASI will be given until August 1, 2012 to make these corrections.

Recommendation C.2: Revise the data quality review process to include procedures that ensure invoices submitted by the contractor are reported in the correct quarter.

NAVFAC Southwest Management Response: *Concur.*

As stated in response C.1, a data quality review process is in place to verify invoice amount are reported in the correct quarter. Recommend this action item be closed.

Recommendation C.3: Develop and implement procedures for data quality review process to perform logic or spot checks on the contractor's justification of the number of jobs reported during the design phase.

NAVFAC Southwest Management Response: *Concur.*

Since April 2011, NAVFACSW has implemented a centralized procedure for data quality reviews. The focal point obtains quarterly reports from daily records showing the hours worked and compares that report with the total hours reported for that quarter. In addition, the Adminstrating Contracting Officer is required to verify and reconcile any noted discrepancies. Recommend this action item be closed.

Recommendation C.4: Update the Standard Procurement System to ensure contract actions are transferred to the Federal Procurement Data System for the awarded Advanced Metering Infrastructure task orders.

NAVFAC Southwest Management Response: *Concur.*

The Standard Procurement System already has mechanisms in place to ensure contract action reports are transferred to the Federal Procurement Data System. As

mentioned during the DOD IG's visit, there was a system glitch that prevented the CARs from being reported and has been addressed. To ensure contract actions are reported, the Electronic Application (eApps) team implemented a process to pull a "Missing CAR" report from SPS on a bi-monthly basis. Any missing CAR's are promptly corrected. Also, Contract Specialists are instructed to contact the eApps team whenever they have a problem finalizing a CAR when releasing an award. Of the modifications identified by DODIG the eApps team is conducting a thorough review to ensure all actions are accounted for and reported. NAVFACSW will ensure all corrections are completed by June 2012.

Recommendation C.5: Develop procedures to monitor contract actions entered into the Standard Procurement System, which transfers those actions to Federal Procurement Data System.

NAVFAC Southwest Management Response: Concur.

As identified in our response to C.4, the eApps team implemented a process to monitor contract actions by pulling a "Missing CAR" report from SPS on a bi-monthly basis. Any missing CAR's are promptly corrected. Also, Contract Specialists are instructed to contact the eApps team whenever they have a problem finalizing a CAR when releasing an award. Recommend closure of this item.

Additional NAVFAC Southwest Input on the DODIG Draft Audit Report:

1. Missing NEPA Documentation (CATEXes) – page 6

Thank you for the opportunity to review the Draft Report. Our understanding of the National Environmental Policy Act (NEPA) conclusions at page six of the Draft Report is, in a nutshell that:

1. OPNAVINST 11010.20G requires that DD form 1391 must have completed NEPA documentation attached to them;
2. The relevant 1391 lacked the record or records of Categorical Exclusion (CATEX), as required, although CATEXes, it is conceded, were prepared later;
3. The absence of CATEXes attached to the 1391 prevented environmental values from being incorporated into the Federal decision process, as required by SECNAVINST 5090.6A

NAVFAC Southwest responds that OPNAVINST 11010.20G does not establish a rigid requirement to include NEPA documentation in support of a 1391. Secondly, although the relevant 1391 did not have CATEXes for all actions, that was not necessary to comply with NEPA, and was consistent with standard practice. Lastly, environmental values were included in project discussions from the earliest conceptual stages.

OPNAVINST 11010.20G does list NEPA documents, among other documents, as "[c]ommon attachments" to a 1391. It does not say that any of the documents listed are required in every case, and it specifically allows that there may be other common documents. The goal is not to assemble a certain list. Rather, the attachments are "required to the extent necessary to fully communicate the location, scope, complexity cost, and urgency of the project."

Leaving CATEXes out of the 1391 package did not violate any requirements. It is very common practice not to have complete NEPA documentation ready at such an early and conceptual stage of planning. It would not be practical and the expense would be exorbitant. This is especially true with projects that require an EA or an EIS, which documents may cost from the low six figures into the millions where a more elaborate EIS is needed. This is a major reason that NEPA requires there to actually be some type of proposal ready so that meaningful environmental review can be done, and effort and dollars are not squandered analyzing remote and speculative possibilities. The NEPA regulations at 40 CFR 1502.5(a) says that the "go-no go" stage is the point where the NEPA document needs to be prepared. That is when there is a proposal and a decision maker needs to see what the environmental impacts of an action would be if it goes forward and needs to know what mitigations can be incorporated into that action. The Navy generally interprets "go-no go" as the point when the decision is being made to implement or not implement a proposal. That is usually the point of award for a contract or a work order, but it is a very fact specific determination.

Although the 1391 is an early and conceptual "pre proposal" phase of planning, environmental values enter the decision making process even earlier. NEPA does not only act through finished documents. Environmental experts with extensive local knowledge are included in most decision making. Many ideas never even make it to the 1391 stage, because undesirable environmental impacts cause them to be discarded. For example, if a commander contemplates replacing a pier, he or she consults environmental staff to weigh the feasibility, cost, and desirability of the idea. Knowledge of Environmental Impacts can result in replacement becoming renovation, or just being shelved for the time being solely based on environmental factors.

In the present case environmental impact considerations drove the decision as to which projects would be implemented. There was a need to move expeditiously. There was not time to do an EA or an EIS. At the same time, given the very minor nature of many of the proposed actions, it was easy to see that many of the actions qualified easily for CATEXes. In the "go-no go" decision context those actions could go forward. Any action with potential significant adverse effects to natural or cultural resources could not go forward. With input of environmental experts, these decisions could easily have been made without final written CATEXes. However, written CATEXes were in place by the time the "go-no go" decision was made.

The central issue here is whether NEPA documentation must be completed by the 1391 stage. It is an important issue to NAVFAC, because such a requirement would have a crippling effect on the ability to conduct construction and maintenance actions for the

Navy. At the same time it would not advance environmental values. For this reason we respectfully ask that NAVFAC environmental counsel be consulted if anything here is the least bit unclear.



Inspector General Department of Defense